

38-1a-101. Title.

This chapter is known as "Preconstruction and Construction Liens."

Enacted by Chapter 278, 2012 General Session

38-1a-102. Definitions.

As used in this chapter:

(1) "Alternate means" means a method of filing a legible and complete notice or other document with the registry other than electronically, as established by the division by rule.

(2) "Anticipated improvement" means the improvement:

(a) for which preconstruction service is performed; and

(b) that is anticipated to follow the performing of preconstruction service.

(3) "Applicable county recorder" means the office of the recorder of each county in which any part of the property on which a claimant claims or intends to claim a preconstruction or construction lien is located.

(4) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting shares or other ownership interest.

(5) "Claimant" means a person entitled to claim a preconstruction or construction lien.

(6) "Compensation" means the payment of money for a service rendered or an expense incurred, whether based on:

(a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or percentage fee, or commission; or

(b) a combination of the bases listed in Subsection (6)(a).

(7) "Construction lender" means a person who makes a construction loan.

(8) "Construction lien" means a lien under this chapter for construction work.

(9) "Construction loan" does not include a consumer loan secured by the equity in the consumer's home.

(10) "Construction project" means an improvement that is constructed pursuant to an original contract.

(11) "Construction work":

(a) means labor, service, material, or equipment provided for the purpose and during the process of constructing, altering, or repairing an improvement; and

(b) includes scheduling, estimating, staking, supervising, managing, materials testing, inspection, observation, and quality control or assurance involved in constructing, altering, or repairing an improvement.

(12) "Contestable notice" means a notice of preconstruction service under Section 38-1a-401, a preliminary notice under Section 38-1a-501, or a notice of completion under Section 38-1a-506.

(13) "Contesting person" means an owner, original contractor, subcontractor, or other interested person.

(14) "Designated agent" means the third party the division contracts with as provided in Section 38-1a-202 to create and maintain the registry.

(15) "Division" means the Division of Occupational and Professional Licensing

created in Section 58-1-103.

(16) "Entry number" means the reference number that:

(a) the designated agent assigns to each notice or other document filed with the registry; and

(b) is unique for each notice or other document.

(17) "Final completion" means:

(a) the date of issuance of a permanent certificate of occupancy by the local government entity having jurisdiction over the construction project, if a permanent certificate of occupancy is required;

(b) the date of the final inspection of the construction work by the local government entity having jurisdiction over the construction project, if an inspection is required under a state-adopted building code applicable to the construction work, but no certificate of occupancy is required;

(c) unless the owner is holding payment to ensure completion of construction work, the date on which there remains no substantial work to be completed to finish the construction work under the original contract, if a certificate of occupancy is not required and a final inspection is not required under an applicable state-adopted building code; or

(d) the last date on which substantial work was performed under the original contract, if, because the original contract is terminated before completion of the construction work defined by the original contract, the local government entity having jurisdiction over the construction project does not issue a certificate of occupancy or perform a final inspection.

(18) "First preliminary notice filing" means a preliminary notice that:

(a) is the earliest preliminary notice filed on the construction project for which the preliminary notice is filed;

(b) is filed on a construction project that, at the time the preliminary notice is filed, has not reached final completion; and

(c) is not cancelled under Section 38-1a-307.

(19) "Government project-identifying information" has the same meaning as defined in Section 38-1b-102.

(20) "Improvement" means:

(a) a building, infrastructure, utility, or other human-made structure or object constructed on or for and affixed to real property; or

(b) a repair, modification, or alteration of a building, infrastructure, utility, or object referred to in Subsection (19)(a).

(21) "Interested person" means a person that may be affected by a construction project.

(22) "Notice of commencement" means a notice required under Section 38-1b-201 for a government project, as defined in Section 38-1b-102.

(23) "Original contract":

(a) means a contract between an owner and an original contractor for preconstruction service or construction work; and

(b) does not include a contract between an owner-builder and another person.

(24) "Original contractor" means a person, including an owner-builder, that contracts with an owner to provide preconstruction service or construction work.

- (25) "Owner" means the person that owns the project property.
- (26) "Owner-builder" means an owner, including an owner who is also an original contractor, who:
- (a) contracts with one or more other persons for preconstruction service or construction work for an improvement on the owner's real property; and
 - (b) obtains a building permit for the improvement.
- (27) "Preconstruction lien" means a lien under this chapter for a preconstruction service.
- (28) "Preconstruction service":
- (a) means to plan or design, or to assist in the planning or design of, an improvement or a proposed improvement:
 - (i) before construction of the improvement commences; and
 - (ii) for compensation separate from any compensation paid or to be paid for construction work for the improvement; and
 - (b) includes consulting, conducting a site investigation or assessment, programming, preconstruction cost or quantity estimating, preconstruction scheduling, performing a preconstruction construction feasibility review, procuring construction services, and preparing a study, report, rendering, model, boundary or topographic survey, plat, map, design, plan, drawing, specification, or contract document.
- (29) "Private project" means a construction project that is not a government project.
- (30) "Project property" means the real property on or for which preconstruction service or construction work is or will be provided.
- (31) "Registry" means the State Construction Registry under Part 2, State Construction Registry.
- (32) "Required notice" means:
- (a) a notice of preconstruction service under Section 38-1a-401;
 - (b) a preliminary notice under Section 38-1a-501 or Section 38-1b-202;
 - (c) a notice of commencement;
 - (d) a notice of construction loan under Section 38-1a-601;
 - (e) a notice under Section 38-1a-602 concerning a construction loan default;
 - (f) a notice of intent to obtain final completion under Section 38-1a-506; or
 - (g) a notice of completion under Section 38-1a-507.
- (33) "Subcontractor" means a person that contracts to provide preconstruction service or construction work to:
- (a) a person other than the owner; or
 - (b) the owner, if the owner is an owner-builder.
- (34) "Substantial work" does not include repair work or warranty work.
- (35) "Supervisory subcontractor" means a person that:
- (a) is a subcontractor under contract to provide preconstruction service or construction work; and
 - (b) contracts with one or more other subcontractors for the other subcontractor or subcontractors to provide preconstruction service or construction work that the person is under contract to provide.

38-1a-103. Government projects not subject to chapter -- Exception.

Except as provided in Section 38-1a-102, Part 2, State Construction Registry, and Chapter 1b, Government Construction Projects, this chapter does not apply to a government project, as defined in Section 38-1b-102.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-104. Owner-builder original contract -- Owner-builder as original contractor.

For purposes of this chapter:

- (1) an original contract is considered to exist between an owner-builder as owner and the owner-builder as original contractor; and
- (2) in addition to being an owner, an owner-builder is considered to be an original contractor.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-105. No waiver of rights -- Exception.

(1) (a) A right or privilege under this chapter may not be waived or limited by contract.

(b) A provision of a contract purporting to waive or limit a right or privilege under this chapter is void.

(2) Notwithstanding Subsection (1), a claimant may waive or limit, in whole or in part, a lien right under this chapter in consideration of payment as provided in Section 38-1a-802.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-201. Establishment of State Construction Registry -- Filing index.

(1) Subject to receiving adequate funding through a legislative appropriation and contracting with an approved third party vendor as provided in Section 38-1a-202, the division shall establish and maintain the State Construction Registry to:

- (a) (i) assist in protecting public health, safety, and welfare; and
- (ii) promote a fair working environment;
- (b) be overseen by the division with the assistance of the designated agent;
- (c) provide a central repository for all required notices;
- (d) make accessible, by way of an Internet website:
 - (i) the filing and review of required notices; and
 - (ii) the transmitting of building permit information under Subsection 38-1a-205(1) and the reviewing of that information;
- (e) accommodate:
 - (i) electronic filing of required notices and electronic transmitting of building permit information described in Subsection (1)(d)(ii); and
 - (ii) the filing of required notices by alternate means, including United States mail, telefax, or any other method as the division provides by rule;
- (f) (i) provide electronic notification for up to three email addresses for each

interested person who requests to receive notification under Section 38-1a-204 from the designated agent; and

(ii) provide alternate means of providing notification to a person who makes a filing by alternate means, including United States mail, telefax, or any other method as the division prescribes by rule; and

(g) provide hard-copy printing of electronic receipts for an individual filing evidencing the date and time of the individual filing and the content of the individual filing.

(2) The designated agent shall index filings in the registry by:

(a) the name of the owner;

(b) the name of the original contractor;

(c) subdivision, development, or other project name, if any;

(d) lot or parcel number;

(e) the address of the project property;

(f) entry number;

(g) the name of the county in which the project property is located;

(h) for private projects:

(i) the tax parcel identification number of each parcel included in the project property; and

(ii) the building permit number;

(i) for government projects, the government project-identifying information; and

(j) any other identifier that the division considers reasonably appropriate in collaboration with the designated agent.

Amended by Chapter 278, 2013 General Session

38-1a-202. Contract to establish and maintain registry -- Designated agent -- Rules -- Duties of designated agent -- Limit of liability.

(1) (a) The division shall contract, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, with a third party to establish and maintain the registry for the purposes established under this part.

(b) The designated agent is not an agency, instrumentality, or political subdivision of the state.

(2) (a) The third party under contract under this section is the division's designated agent, and shall develop and maintain a registry from the information provided by:

(i) local government entities issuing building permits;

(ii) original contractors;

(iii) subcontractors;

(iv) construction lenders; and

(v) other interested persons.

(b) The registry shall accommodate filings by third parties on behalf of clients.

(3) (a) The division shall make rules and develop procedures for:

(i) the division to oversee and enforce this chapter and Chapter 1b, Government Construction Projects;

(ii) the designated agent to administer this chapter and Chapter 1b, Government

Construction Projects; and

(iii) the form of submission of a filing by alternate means, which may include procedures for rejecting an illegible or incomplete filing.

(b) If this chapter directs or authorizes the division to make a rule or adopt a procedure to implement the provisions of this chapter or Chapter 1b, Government Construction Projects, the division shall make the rule or adopt the procedure in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) (a) The designated agent shall archive computer data files at least semiannually for auditing purposes.

(b) The division shall make rules to allow the designated agent to periodically archive projects from the registry.

(c) The designated agent may not archive a project earlier than:

(i) one year after the day on which a notice of completion is filed for a construction project;

(ii) if no notice of completion is filed, two years after the last filing activity for a project; or

(iii) one year after the day on which a contestable notice is cancelled under Section 38-1a-307.

(d) The division may audit the designated agent's administration of the registry as often as the division considers necessary.

(5) The designated agent shall carry errors and omissions insurance in the amounts that the division establishes by rule.

(6) (a) The designated agent shall make reasonable efforts to assure the accurate entry into the registry of information provided by alternate means.

(b) The designated agent shall meet or exceed standards established by the division for the accuracy of data entry for information on documents filed by alternate means.

(7) The designated agent is not liable for the correctness of the information contained in a document filed by alternate means which the registered agent enters into the database.

Renumbered and Amended by Chapter 278, 2012 General Session

Amended by Chapter 347, 2012 General Session

38-1a-203. Filings with the registry.

(1) The division and the designated agent need not determine the timeliness of any notice before filing the notice in the registry.

(2) A notice filed by a third party on behalf of another is considered to be filed by the person on whose behalf the notice is filed.

(3) A person filing a notice of commencement, preliminary notice, or notice of completion is responsible for verifying the accuracy of information entered into the registry, whether the person files electronically, by alternate means, or through a third party.

(4) Each notice or other document submitted for inclusion in the registry and for which this chapter does not specify information required to be included in the notice or other document shall contain:

- (a) the name of the county in which the project property to which the notice or other document applies is located;
- (b) for a private project:
 - (i) the tax parcel identification number of each parcel included in the project property; or
 - (ii) the number of the building permit for the construction project on the project property; and
- (c) for a government project, the government project-identifying information.

Enacted by Chapter 278, 2012 General Session

38-1a-204. Notification of filings with the registry.

(1) The designated agent shall provide notification of the filing of a required notice relating to an anticipated improvement or construction project to:

- (a) the person filing the required notice, unless the person indicates to the division or designated agent that the person does not want to receive notification; and
- (b) each person that requests notification of the filing of a required notice for that anticipated improvement or construction project.

(2) (a) A person may request the designated agent to provide the person notification of the filing of a required notice for any anticipated improvement or construction project.

(b) A person requesting notification under Subsection (2)(a) is responsible:

- (i) to provide an email address, mailing address, or telefax number to which notification may be sent; and
- (ii) for the accuracy of the email address, mailing address, or telefax number.

(c) A person is considered to have requested notification under Subsection (2)(a) if the person files, with respect to the same anticipated improvement or construction project that relates to the required notice that is the subject of the notification:

- (i) a notice of preconstruction service;
- (ii) a notice of commencement;
- (iii) a preliminary notice;
- (iv) a notice of construction loan; or
- (v) a notice of completion.

(3) The designated agent fulfills the notification requirement under Subsection (1) by sending the notification to the email address, mailing address, or telefax number that the person provides to the designated agent, whether or not the person actually receives the notification.

Amended by Chapter 464, 2013 General Session

38-1a-205. Building permit -- Transmission to registry -- Posting at project site.

(1) (a) A county, city, or town issuing a building permit for a private project:

- (i) shall, no later than 15 days after issuing the permit, input the building permit application and transmit the building permit information to the registry electronically by

way of the Internet or computer modem or by any other means; and

(ii) may collect a building permit fee related to the issuance of the building permit, but may not spend or otherwise use the building permit fee until the county, city, or town complies with Subsection (1)(a)(i) with respect to the building permit for which the fee is charged.

(b) The person to whom a building permit, filed under Subsection (1)(a), is issued is responsible for the accuracy of the information in the building permit.

(c) For the purposes of classifying a record under Title 63G, Chapter 2, Government Records Access and Management Act, the division shall classify in the registry building permit information transmitted from a county, city, or town to the registry notwithstanding the classification of the building permit information by the county, city, or town.

(2) At the time a building permit is obtained, each original contractor for construction service shall conspicuously post at the project site a copy of the building permit obtained for the project.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-206. Registry fees.

(1) In accordance with the process required by Section 63J-1-504, the division shall establish the fees for:

- (a) required notices, whether filed electronically or by alternate means;
- (b) a request for notification under Section 38-1a-204;
- (c) providing notification of a required notice, whether electronically or by alternate means;
- (d) a duplicate receipt of a filing; and
- (e) account setup for a person who wishes to be billed periodically for filings with the registry.

(2) The fees allowed under Subsection (1) may not in the aggregate exceed the amount reasonably necessary to create and maintain the registry.

(3) The fees established by the division may vary by method of filing if one form or means of filing is more costly to process than another form or means of filing.

(4) The division may provide by contract that the designated agent may retain all fees collected by the designated agent, except that the designated agent shall remit to the division the cost of the division's oversight.

(5) (a) A person who is delinquent on the payment of a fee established under this section may not file a notice with the registry.

(b) The division shall make a determination whether a person is delinquent on the payment of a fee for filing established under this section in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(c) Any order that the division issues in a proceeding described in Subsection (5)(b) may prescribe the method of that person's payment of fees for filing notices with the registry after issuance of the order.

Enacted by Chapter 278, 2012 General Session

38-1a-207. Registry classification.

(1) The registry is classified as a public record under Title 63G, Chapter 2, Government Records Access and Management Act, unless the division classifies it otherwise.

(2) A request for information submitted to the designated agent is not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(3) A person desiring information contained in a public record in the registry shall request the information from the designated agent.

(4) The designated agent may charge a commercially reasonable fee allowed by the designated agent's contract with the division for providing information under Subsection (3).

(5) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, if information is available in a public record contained in the registry, a person may not request the information from the division.

(6) (a) A person may request information that is not a public record contained in the registry from the division in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The division shall inform the designated agent of how to direct an inquiry made to the designated agent for information that is not a public record contained in the registry.

Enacted by Chapter 278, 2012 General Session

38-1a-208. Actions that are not adjudicative proceedings.

None of the following is an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act:

(1) the filing of a notice permitted or required by this chapter;

(2) the rejection of a filing permitted or required by this chapter; or

(3) other action by the designated agent in connection with a filing of any notice permitted or required by this chapter.

Enacted by Chapter 278, 2012 General Session

38-1a-209. Abuse of registry -- Penalty.

(1) As used in this section, "third party" means an owner, an original contractor, a subcontractor, or any interested party.

(2) A person abuses the registry if that person files a notice in the registry:

(a) without a good faith basis for doing so;

(b) with the intent to exact more than is due from the owner or any other interested party; or

(c) to procure an unjustified advantage or benefit.

(3) A person who abuses the registry as described in Subsection (2) is liable to a third party who is affected by the notice for twice the amount of the actual damages incurred by the third party or \$2,000, whichever is greater.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-210. Limitation of liability.

(1) The state and the state's agencies, instrumentalities, political subdivisions, and an employee of a governmental entity are immune from suit for any injury resulting from the registry.

(2) The designated agent and its principals, agents, and employees are not liable to any person for the accuracy, coherence, suitability, completeness, or legal effectiveness of information filed or searched in the registry if the designated agent:

(a) develops and maintains the registry in compliance with reliability, availability, and security standards established by the division; and

(b) meets data entry accuracy standards established by the division under Subsection 38-1a-202(6)(b).

(3) The designated agent and its principals, agents, and employees are not liable for their inability to perform obligations under this chapter to the extent performance of those obligations is prevented by:

(a) a storm, earthquake, or other act of God;

(b) a fire;

(c) an accident;

(d) governmental interference; or

(e) any other event or cause beyond the designated agent's control.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-211. Limit on notice effect of document filing in the registry.

The filing of a document in the registry is not intended to give notice to all persons of the content of the document within the meaning of Section 57-3-102 and does not constitute constructive notice of matters relating to real property to purchasers for value and without knowledge.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-301. Those entitled to lien -- What may be attached.

(1) Except as provided in Section 38-11-107, a person who provides preconstruction service or construction work on or for a project property has a lien on the project property for the reasonable value of the preconstruction service or construction work, respectively, as provided in this chapter.

(2) A person may claim a preconstruction lien and a separate construction lien on the same project property.

(3) (a) A construction lien may include an amount claimed for a preconstruction service.

(b) A preconstruction lien may not include an amount claimed for construction work.

(4) A preconstruction or construction lien attaches only to the interest that the owner has in the project property that is the subject of the lien.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-302. Land covered by lien -- Multiple lots occupied by improvement -- What a lien attaches to.

(1) A preconstruction or construction lien extends to and covers as much of the land on which the improvement is made as necessary for the convenient use and occupation of the land.

(2) If an improvement occupies two or more lots or other subdivisions of land, the lots or subdivisions are considered as one for the purposes of this chapter.

(3) A preconstruction or construction lien attaches to all franchises, privileges, appurtenances, machinery, and fixtures pertaining to or used in connection with the improvement.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-303. Limits on attachment, garnishment, and execution levy -- Subcontractor lien not affected by payments, debts, offsets, and counterclaims involving other parties.

(1) An assignment, attachment, or garnishment of or encumbrance or execution levy on money that an owner owes to an original contractor is not valid as against a subcontractor's preconstruction or construction lien.

(2) An assignment, attachment, or garnishment of or encumbrance or execution levy on money that an original contractor owes to a subcontractor is not valid as against a lien of a laborer employed by the day or piece.

(3) The preconstruction or construction lien of a subcontractor may not be diminished, impaired, or otherwise affected by:

(a) a payment, whether in cash or in-kind, to the original contractor or another subcontractor;

(b) a debt owed by the original contractor to the owner;

(c) a debt owed by another subcontractor to the original contractor or to a third subcontractor; or

(d) an offset or counterclaim in favor of the owner against the original contractor, or in favor of the original contractor against another subcontractor, or in favor of another subcontractor against a third subcontractor.

Enacted by Chapter 278, 2012 General Session

38-1a-304. Liens on multiple properties in one claim.

(1) A claimant may claim a preconstruction or construction lien against two or more improvements owned by the same person.

(2) If a claimant claims a preconstruction or construction lien against two or more improvements owned by the same person, the claimant shall designate the amount claimed to be due on each of the improvements.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-305. Payments applied first to preconstruction lien.

Unless an agreement waiving or limiting a right under a preconstruction or

construction lien expressly provides that a payment is required to be applied to a specific lien, mortgage, or encumbrance, a payment to a person claiming both a preconstruction lien and a construction lien shall be applied first to the preconstruction lien until paid in full.

Enacted by Chapter 278, 2012 General Session

38-1a-306. Substantial compliance.

(1) Substantial compliance with the requirements of this chapter is sufficient to claim, as applicable, a preconstruction lien or a construction lien.

(2) Subsection (1) may not be construed to excuse compliance with or affect the requirement to file:

(a) a notice of preconstruction service as provided in Section 38-1a-401 in order to claim a preconstruction lien; or

(b) a preliminary notice as provided in Section 38-1a-501 in order to claim a construction lien.

Amended by Chapter 464, 2013 General Session

38-1a-307. Contesting certain notices.

(1) A contesting person who believes that a contestable notice lacks proper basis and is therefore invalid may request from the person who filed the notice evidence establishing the validity of the notice.

(2) Within 10 days after receiving a request under Subsection (1), the person who filed the contestable notice shall provide the requesting person evidence that the notice is valid.

(3) If the person who filed the notice does not provide timely evidence of the validity of the contestable notice, the person who filed the notice shall immediately cancel the notice from the registry in the manner prescribed by the division by rule.

Enacted by Chapter 278, 2012 General Session

38-1a-308. Intentional submission of excessive lien notice -- Criminal and civil liability.

(1) A person is guilty of a class B misdemeanor if:

(a) the person intentionally submits for recording a notice of preconstruction lien or notice of construction lien against any property containing a greater demand than the sum due; and

(b) by submitting the notice, the person intends:

(i) to cloud the title;

(ii) to exact from the owner or person liable by means of the excessive notice of preconstruction or construction lien more than is due; or

(iii) to procure any unjustified advantage or benefit.

(2) (a) As used in this Subsection (2), "third party" means an owner, original contractor, or subcontractor.

(b) In addition to any criminal penalty under Subsection (1), a person who

submits a notice of preconstruction lien or notice of construction lien as described in Subsection (1) is liable to a third party who is affected by the lien for twice the amount by which the excessive lien notice exceeds the amount actually due or the actual damages incurred by the owner, original contractor, or subcontractor, whichever is greater.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-309. Interest rate on lien.

Unless otherwise specified in a lawful contract between the owner-builder and the person claiming a lien under this chapter, the interest rate applicable to the lien is the rate described in Subsection 15-1-1(2).

Enacted by Chapter 330, 2012 General Session

38-1a-401. Notice of preconstruction service.

(1) (a) A person that desires to claim a preconstruction lien on real property shall file a notice of preconstruction service with the registry no later than 20 days after the person commences providing preconstruction service for the anticipated improvement on the real property.

(b) A person that fails to file a timely notice of preconstruction service as required in this section may not claim a valid preconstruction lien.

(c) A timely filed notice of preconstruction service is effective as to each preconstruction service that the person filing the notice provides for the anticipated improvement under a single original contract, including preconstruction service that the person provides to more than one supervising subcontractor under that original contract.

(d) A notice of preconstruction service filed for preconstruction service provided or to be provided under an original contract for an anticipated improvement on real property is not valid for preconstruction service provided or to be provided under a separate original contract for an anticipated improvement on the same real property.

(e) A notice of preconstruction service that is timely filed with the database with respect to an anticipated improvement is considered to have been filed at the same time as the earliest timely filed notice of preconstruction service for that anticipated improvement.

(f) A notice of preconstruction service shall include:

(i) the name, address, telephone number, and email address of the person providing the preconstruction service;

(ii) the name, address, telephone number, and email address of the person that employed the person providing the preconstruction service;

(iii) a general description of the preconstruction service the person provided or will provide;

(iv) the name of the record or reputed owner;

(v) the name of the county in which the property on which the anticipated improvement will occur is located;

(vi) (A) the tax parcel identification number of each parcel included in that

property; or

(B) the entry number of a previously filed notice of preconstruction service that includes the tax parcel identification number of each parcel included in that property; and

(vii) a statement that the person filing the notice intends to claim a preconstruction lien if the person is not paid for the preconstruction service the person provides.

(g) (i) A claimant who is an original contractor or a supervisory subcontractor may include in a notice of preconstruction service the name, address, and telephone number of each subcontractor who is under contract with the claimant to provide preconstruction service that the claimant is under contract to provide.

(ii) The inclusion of a subcontractor in a notice of preconstruction service filed by another claimant is not a substitute for the subcontractor's own submission of a notice of preconstruction service.

(2) The burden is on the person filing the notice of preconstruction service to prove that the person has substantially complied with the requirements of this section.

(3) (a) Subject to Subsection (3)(b), a person required by this section to file a notice of preconstruction service is required to give only one notice for each anticipated improvement.

(b) A person that provides preconstruction service under more than one original contract for the same anticipated improvement and desires to claim a preconstruction lien for preconstruction service provided under each original contract shall file a separate notice of preconstruction service for preconstruction service provided under each original contract.

(4) A person filing a notice of preconstruction service by alternate means is responsible for verifying and changing any incorrect information in the notice of preconstruction service before the expiration of the period during which the notice is required to be filed.

Amended by Chapter 464, 2013 General Session

38-1a-402. Notice of preconstruction lien -- Requirements.

(1) Within 90 days after completing a preconstruction service for which a claimant is not paid in full, a claimant who desires to claim a preconstruction lien shall submit for recording with each applicable county recorder a notice of preconstruction lien.

(2) A claimant who fails to submit a notice of preconstruction lien as provided in Subsection (1) may not claim a preconstruction lien.

(3) (a) A notice of preconstruction service lien shall include:

- (i) the claimant's name, mailing address, and telephone number;
- (ii) a statement that the claimant claims a preconstruction lien;
- (iii) the date the claimant's notice of preconstruction service was filed;
- (iv) the name of the person that employed the claimant;
- (v) a general description of the preconstruction service provided by the claimant;
- (vi) the date that the claimant last provided preconstruction service;
- (vii) the name, if known, of the reputed owner or, if not known, the name of the

record owner;

(viii) a description of the project property sufficient for identification;

(ix) the principal amount, excluding interest, costs, and attorney fees, claimed by the claimant;

(x) the claimant's signature or the signature of the claimant's authorized agent;

(xi) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents; and

(xii) if the lien is against an owner-occupied residence, as defined in Section 38-11-102, a statement meeting the requirements that the division has established by rule, describing the steps the owner of the owner-occupied residence may take to require a claimant to remove the lien as provided in Section 38-11-107.

(b) (i) A claimant who is an original contractor or a supervising subcontractor may include in a notice of preconstruction lien the name, address, and telephone number of each subcontractor who is under contract with the claimant to provide preconstruction service that the claimant is under contract to provide.

(ii) The inclusion of a subcontractor in a notice of preconstruction lien filed by another claimant is not a substitute for the subcontractor's own submission of a notice of preconstruction lien.

(4) (a) A county recorder:

(i) shall record each notice of preconstruction lien in an index maintained for that purpose; and

(ii) need not verify that a valid notice of preconstruction service is filed with respect to the claimed preconstruction lien.

(b) All persons are considered to have notice of a notice of preconstruction lien from the time it is recorded.

(5) (a) Within 30 days after a claimant's notice of preconstruction lien is recorded, the claimant shall send by certified mail a copy of the notice to the reputed or record owner.

(b) If the record owner's address is not readily available to the claimant, the claimant may mail a copy of the notice to the owner's last-known address as it appears on the last completed assessment roll of the county in which the property is located.

(c) A claimant's failure to mail a copy of the notice as required in this Subsection (5) precludes the claimant from being awarded costs and attorney fees against the reputed or record owner in an action to enforce the lien.

(6) Nothing in this section may be construed to prohibit a claimant from recording a notice of preconstruction lien before completing the preconstruction service the claimant contracted to provide.

Amended by Chapter 464, 2013 General Session

**38-1a-403. Effective time and priority of preconstruction lien --
Subordination to bona fide loan.**

(1) Except as otherwise provided in this chapter, a preconstruction lien:

(a) relates back to and takes effect as of the time of filing of the earliest timely filed notice of preconstruction service under Section 38-1a-401 for the anticipated improvement for which the preconstruction lien is claimed; and

- (b) has priority over:
 - (i) any lien, mortgage, or other encumbrance that attaches after the earliest timely filed notice of preconstruction service is filed; and
 - (ii) any lien, mortgage, or other encumbrance of which the claimant had no notice and that was unrecorded at the time the earliest timely filed notice of preconstruction service is filed.
- (2) A preconstruction lien is subordinate to an interest securing a bona fide loan if and to the extent that the lien covers preconstruction service provided after the interest securing a bona fide loan is recorded.

Amended by Chapter 464, 2013 General Session

38-1a-404. When preconstruction service considered complete.

Preconstruction service is considered complete for any project, project phase, or bid package as of the date that construction work for that project, project phase, or bid package, respectively, commences.

Enacted by Chapter 278, 2012 General Session

38-1a-405. Preconstruction liens on equal footing.

- (1) Each preconstruction lien on a project property is on equal footing with every other preconstruction lien on the project property, regardless of:
 - (a) when the claimant submitted the claimant's notice of preconstruction service for recording;
 - (b) when the claimant submitted the claimant's notice of preconstruction lien for recording; or
 - (c) when the preconstruction service related to the lien occurs.
- (2) Subsection (1) does not affect the priority of a construction lender's mortgage or trust deed, as established under this chapter.

Enacted by Chapter 464, 2013 General Session

38-1a-501. Preliminary notice.

- (1) (a) A person who desires to claim a construction lien on real property shall file a preliminary notice with the registry no later than 20 days after the day on which the person commences providing construction work on the real property.
- (b) Subject to Subsection (1)(c), a preliminary notice is effective as to all construction work that the person filing the notice provides to the construction project under a single original contract, including construction work that the person provides to more than one supervisory subcontractor under that original contract.
- (c) (i) A person who desires to claim a construction lien on real property but fails to file a timely preliminary notice within the period specified in Subsection (1)(a) may, subject to Subsection (1)(d), file a preliminary notice with the registry after the period specified in Subsection (1)(a).
- (ii) A person who files a preliminary notice under Subsection (1)(c)(i) may not claim a construction lien for construction work the person provides to the construction

project before the date that is five days after the preliminary notice is filed.

(d) Notwithstanding Subsections (1)(a) and (c), a preliminary notice has no effect if it is filed more than 10 days after the filing of a notice of completion under Section 38-1a-507 for the construction project for which the preliminary notice is filed.

(e) A person who fails to file a preliminary notice as required in this section may not claim a construction lien.

(f) A preliminary notice that is filed with the registry as provided in this section is considered to be filed at the time of the first preliminary notice filing.

(g) If a preliminary notice filed with the registry includes the tax parcel identification number of a parcel not previously associated in the registry with a construction project, the designated agent shall promptly notify the person who filed the preliminary notice that:

(i) the preliminary notice includes a tax parcel identification number of a parcel not previously associated in the registry with a construction project; and

(ii) the likely explanation is that:

(A) the preliminary notice is the first filing for the project; or

(B) the tax parcel identification number is incorrectly stated in the preliminary notice.

(h) A preliminary notice shall include:

(i) the name, address, telephone number, and email address of the person providing the construction work for which the preliminary notice is filed;

(ii) the name and address of the person who contracted with the claimant for the construction work;

(iii) the name of the record or reputed owner;

(iv) the name of the original contractor for construction work under which the claimant is providing or will provide construction work;

(v) the address of the project property or a description of the location of the project;

(vi) the name of the county in which the project property is located; and

(vii) (A) the tax parcel identification number of each parcel included in the project property;

(B) the entry number of a previously filed notice of construction loan under Section 38-1a-601 on the same project;

(C) the entry number of a previously filed preliminary notice on the same project that includes the tax parcel identification number of each parcel included in the project property; or

(D) the entry number of the building permit issued for the project.

(i) A preliminary notice may include:

(i) the subdivision, development, or other project name applicable to the construction project for which the preliminary notice is filed; and

(ii) the lot or parcel number of each lot or parcel that is included in the project property.

(2) (a) Except as provided in Subsection (2)(b), the burden is upon the person filing the preliminary notice to prove that the person has substantially complied with the requirements of this section.

(b) A person has substantially complied with the requirements of this section if

the person files a preliminary notice that links, within the registry, to a preliminary notice filed by an original contractor for the same construction project, using the entry number assigned to the original contractor's preliminary notice.

(c) Substantial compliance with the requirements of Subsections (1)(h)(iii) through (vii) may be established by a person's reasonable reliance on information in the registry provided by a previously filed:

- (i) notice of construction loan under Section 38-1a-601;
- (ii) preliminary notice; or
- (iii) building permit.

(3) (a) Subject to Subsection (3)(b), a person required by this section to give preliminary notice is required to give only one notice for each construction project.

(b) If the construction work is provided pursuant to contracts under more than one original contract for construction work, the notice requirements shall be met with respect to the construction work provided under each original contract.

(4) A person filing a preliminary notice by alternate means is responsible for verifying and changing any incorrect information in the preliminary notice before the expiration of the time period during which the notice is required to be filed.

(5) A person who files a preliminary notice that contains inaccurate or incomplete information may not be held liable for damages suffered by any other person who relies on the inaccurate or incomplete information in filing a preliminary notice.

Amended by Chapter 293, 2014 General Session

38-1a-502. Notice of construction lien -- Contents -- Recording -- Service on owner.

(1) (a) A person who desires to claim a construction lien shall submit for recording in the office of each applicable county recorder a notice of construction lien no later than, except as provided in Subsection (1)(b):

- (i) 180 days after the date on which final completion of the original contract occurs, if no notice of completion is filed under Section 38-1a-507; or
- (ii) 90 days after the date on which a notice of completion is filed under Section 38-1a-507, but not later than 180 days after the date on which final completion of the original contract occurs.

(b) A subcontractor who provides substantial work after a certificate of occupancy is issued or a required final inspection is completed and desires to claim a construction lien shall submit for recording in the office of each applicable county recorder a notice of construction lien no later than 180 days after final completion of that subcontractor's work.

(2) A notice of construction lien shall contain:

- (a) the name of the reputed owner if known or, if not known, the name of the record owner;
- (b) the name of the person by whom the claimant was employed or to whom the claimant provided construction work;
- (c) the time when the claimant first and last provided construction work;
- (d) a description of the project property, sufficient for identification;

- (e) the name, current address, and current phone number of the claimant;
 - (f) the amount claimed under the construction lien;
 - (g) the signature of the claimant or the claimant's authorized agent;
 - (h) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents; and
 - (i) if the construction lien is on an owner-occupied residence, as defined in Section 38-11-102, a statement describing what steps an owner, as defined in Section 38-11-102, may take to require a lien claimant to remove the lien in accordance with Section 38-11-107.
- (3) (a) A county recorder:
- (i) shall record each notice of construction lien in an index maintained for that purpose; and
 - (ii) need not verify that a valid preliminary notice is filed with respect to the claimed construction lien.
- (b) All persons are considered to have notice of a notice of construction lien from the time it is recorded.
- (4) (a) Within 30 days after filing a notice of construction lien, the claimant shall deliver or mail by certified mail a copy of the notice to the reputed owner or the record owner.
- (b) If the record owner's current address is not readily available to the claimant, the claimant may mail a copy of the notice to the last known address of the record owner, using the names and addresses appearing on the last completed real property assessment rolls of the county where the project property is located.
- (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner precludes the claimant from an award of costs and attorney fees against the reputed owner or record owner in an action to enforce the construction lien.
- (5) The division shall make rules governing the form of the statement required under Subsection (2)(i).

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-503. Relation back and priority of liens.

- (1) A construction lien relates back to, and takes effect as of, the time of the first preliminary notice filing.
- (2) (a) Subject to Subsection (2)(b), a construction lien has priority over:
- (i) any lien, mortgage, or other encumbrance that attaches after the first preliminary notice filing; and
 - (ii) any lien, mortgage, or other encumbrance of which the claimant had no notice and which was unrecorded at the time of the first preliminary notice filing.
- (b) A recorded mortgage or trust deed that secures a construction loan attaches immediately before the first preliminary notice filing for the construction project if each claimant that has a preliminary notice on file on the construction project before the mortgage or trust deed was recorded receives full payment for all construction work the claimant performed before the mortgage or trust deed was recorded, regardless of whether the claimant receives full payment before or after the day on which the mortgage or trust deed is recorded.

Amended by Chapter 293, 2014 General Session

38-1a-504. Construction liens on equal footing.

(1) Construction liens on a project property are on an equal footing with one another, regardless of when the notices of construction lien relating to the construction liens are submitted for recording and regardless of when construction work for which the liens are claimed is provided.

(2) Subsection (1) relates to the relationship between claimants' construction liens and does not affect the priority of a construction lender's mortgage or trust deed, as established under this chapter.

Enacted by Chapter 278, 2012 General Session

38-1a-505. Materials for a construction project not subject to process -- Exception.

(1) Materials provided for use in a construction project are not subject to attachment, execution, or other legal process to enforce a debt owed by the purchaser of the materials, if the materials are in good faith about to be applied to the construction, alteration, or repair of an improvement that is the subject of the construction project.

(2) Subsection (1) does not apply to an attachment, execution, or other legal process to enforce a debt incurred to purchase the materials described in Subsection (1).

Enacted by Chapter 278, 2012 General Session

38-1a-506. Notice of intent to obtain final completion.

(1) An owner, as defined in Section 14-2-1, of a nonresidential construction project that is registered with the registry, or an original contractor of a commercial nonresidential construction project that is registered with the registry under Section 38-1a-501, shall file with the registry a notice of intent to obtain final completion as provided in this section if:

- (a) the completion of performance time under the original contract for construction work is greater than 120 days;
- (b) the total original construction contract price exceeds \$500,000; and
- (c) the original contractor or owner has not obtained a payment bond in accordance with Section 14-2-1.

(2) The notice of intent described in Subsection (1) shall be filed at least 45 days before the day on which the owner or original contractor of a commercial nonresidential construction project files or could have filed a notice of completion under Section 38-1a-507.

(3) A person who provides construction work to an owner or original contractor who files a notice of intent in accordance with Subsection (1) shall file an amendment to the person's preliminary notice previously filed by the person as required in Section 38-1a-501:

(a) that includes:

(i) a good faith estimate of the total amount remaining due to complete the contract, purchase order, or agreement relating to the person's approved construction work;

(ii) the identification of each original contractor or subcontractor with whom the person has a contract or contracts for providing construction work; and

(iii) a separate statement of all known amounts or categories of work in dispute; and

(b) no later than 20 days after the day on which the owner or contractor files a notice of intent.

(4) (a) A person described in Subsection (3) may demand a statement of adequate assurance from the owner, contractor, or subcontractor with whom the person has privity of contract no later than 10 days after the day on which the person files a balance statement in accordance with Subsection (3) from an owner, contractor, or subcontractor who is in privity of contract with the person.

(b) A demand for adequate assurance as described in Subsection (4)(a) may include a request for a statement from the owner, contractor, or subcontractor that the owner, contractor, or subcontractor has sufficient funds dedicated and available to pay for all sums due to the person filing for the adequate assurances or that will become due in order to complete a construction project.

(c) A person who demands adequate assurance under Subsection (4)(a) shall deliver copies of the demand to the owner and contractor:

(i) by hand delivery with a responsible party's acknowledgment of receipt;

(ii) by certified mail with a return receipt; or

(iii) as provided under Rule 4, Utah Rules of Civil Procedure.

(5) (a) A person described in Subsection (3) may bring a legal action against a party with whom the person is in privity of contract, including a request for injunctive or declaratory relief, to determine the adequacy of the funds of the owner, contractor, or subcontractor with whom the demanding person contracted if, after the person demands adequate assurance in accordance with the requirements of this section:

(i) the owner, contractor, or subcontractor fails to provide adequate assurance that the owner, contractor, or subcontractor has sufficient available funds, or access to financing or other sufficient available funds, to pay for the completion of the demanding person's approved work on the construction project; or

(ii) the parties disagree, in good faith, as to whether there are adequate funds, or access to financing or other sufficient available funds, to pay for the completion of the demanding person's approved work on the construction project.

(b) If a court finds that an owner, contractor, or subcontractor has failed to provide adequate assurance in accordance with Subsection (4)(a), the court may require the owner, contractor, or subcontractor to post adequate security with the court sufficient to assure timely payment of the remaining contract balance for the approved work of the person seeking adequate assurance, including:

(i) cash;

(ii) a bond;

(iii) an irrevocable letter of credit;

(iv) property;

- (v) financing; or
- (vi) another form of security approved by the court.
- (6) (a) A person is subject to the civil penalty described in Subsection (6)(b), if the person files a balance statement described in Subsection (3) that misrepresents the amount due under the contract with the intent to:
 - (i) charge an owner, contractor, or subcontractor more than the actual amount due; or
 - (ii) procure any other unfair advantage or benefit on the person's behalf.
- (b) The civil penalty described in Subsection (6)(a) is the greater of:
 - (i) twice the amount by which the balance statement filed under Subsection (3) exceeds the amount actually remaining due under the contract for completion of construction; and
 - (ii) the actual damages incurred by the owner, contractor, or subcontractor.
- (7) A court shall award reasonable attorney fees to a prevailing party for an action brought under this section.
- (8) Failure to comply with the requirements established in this section does not affect any other requirement or right under this chapter.
- (9) A person who has not filed a preliminary notice as required under Section 38-1a-501 is not entitled to a right or a remedy provided in this section.
- (10) This section does not create a cause of action against a person with whom the demanding party is not in privity of contract.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-507. Notice of completion.

- (1) (a) Upon final completion of a construction project, a notice of completion may be filed with the registry by:
 - (i) an owner;
 - (ii) an original contractor for construction work;
 - (iii) a lender that has provided financing for the construction project;
 - (iv) a surety that has provided bonding for the construction project; or
 - (v) a title company issuing a title insurance policy on the construction project.
- (b) A notice of completion shall include:
 - (i) the name, address, telephone number, and email address of the person filing the notice of completion;
 - (ii) the name of the county in which the project property is located;
 - (iii) for a private project:
 - (A) the tax parcel identification number of each parcel included in the project property;
 - (B) the entry number of a preliminary notice on the same project that includes the tax parcel identification number of each parcel included in the project property; or
 - (C) the entry number of the building permit issued for the project;
 - (iv) for a government project, the government project-identifying information;
 - (v) the date on which final completion is alleged to have occurred; and
 - (vi) the method used to determine final completion.
- (2) A person filing a notice of completion by alternate means is responsible for

verifying and changing any incorrect information in the notice of completion before the expiration of the time period during which the notice is required to be filed.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-601. Notice of construction loan.

(1) After recording a mortgage or trust deed securing a construction loan on a private project, the construction lender on the loan shall promptly, in conjunction with the closing of the construction loan, file with the registry a notice of construction loan.

(2) A notice under Subsection (1) shall accurately state:

- (a) the lender's name, address, and telephone number;
- (b) the name of the trustor on the trust deed securing the loan;
- (c) the tax parcel identification number of each parcel included or to be included in the construction project for which the loan was given;
- (d) the address of the project property; and
- (e) the name of the county in which the project property is located.

(3) A construction lender that files a notice of construction loan containing incomplete or inaccurate information may not be held liable for damages suffered by any other person who relies on the inaccurate or incomplete information in filing a preliminary notice.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-602. Notice concerning construction loan default.

(1) Within five business days after a notice of default is filed for recording under Section 57-1-24 with respect to a trust deed on the project property securing a construction loan, the construction lender under the loan shall file a notice with the registry.

(2) A notice under Subsection (1) shall:

- (a) include:
 - (i) the information required to be included in a notice of construction loan under Subsection 38-1a-601(2); and
 - (ii) the entry number of the notice of construction loan;
- (b) state that a notice of default with respect to the construction loan has been recorded; and
- (c) state the date that the notice of default was recorded.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-701. Action to enforce lien -- Time for filing action -- Notice of pendency of action -- Action involving a residence.

(1) As used in this section:

- (a) "Owner" has the same meaning as defined in Section 38-11-102.
- (b) "Residence" has the same meaning as defined in Section 38-11-102.

(2) In order to enforce a preconstruction lien or construction lien, a claimant shall file an action to enforce the lien:

(a) except as provided in Subsection (2)(b), within 180 days after the day on which the claimant files:

(i) a notice of preconstruction lien under Section 38-1a-402, for a preconstruction lien; or

(ii) a notice of construction lien under Section 38-1a-502, for a construction lien; or

(b) if an owner files for protection under the bankruptcy laws of the United States before the expiration of the 180-day period under Subsection (2)(a), within 90 days after the automatic stay under the bankruptcy proceeding is lifted or expires.

(3) (a) (i) Within the time period provided in Subsection (2) for filing an action, a claimant shall file for record with each applicable county recorder a notice of the pendency of the action, in the manner provided for actions affecting the title or right to possession of real property.

(ii) If a claimant fails to file for record a notice of the pendency of the action, as required in Subsection (3)(a)(i), the preconstruction lien or construction lien, as applicable, is void, except as to persons who have been made parties to the action and persons having actual knowledge of the commencement of the action.

(b) The burden of proof is upon the claimant and those claiming under the claimant to show actual knowledge under Subsection (3)(a)(ii).

(4) (a) A preconstruction lien or construction lien is automatically and immediately void if an action to enforce the lien is not filed within the time required by this section.

(b) Notwithstanding Section 78B-2-111, a court has no subject matter jurisdiction to adjudicate a preconstruction or construction lien that becomes void under Subsection (4)(a).

(5) This section may not be interpreted to impair or affect the right of any person to whom a debt may be due for any preconstruction service or construction work to maintain a personal action to recover the debt.

(6) (a) If a claimant files an action to enforce a preconstruction or construction lien involving a residence, the claimant shall include with the service of the complaint on the owner of the residence:

(i) instructions to the owner of the residence relating to the owner's rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

(ii) a form to enable the owner of the residence to specify the grounds upon which the owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

(b) The instructions and form required by Subsection (6)(a) shall meet the requirements established by the division by rule.

(c) If a claimant fails to provide to the owner of the residence the instructions and form required by Subsection (6)(a), the claimant is barred from maintaining or enforcing the preconstruction or construction lien upon the residence.

(d) A court shall stay an action to determine the rights and liabilities of an owner of a residence under this chapter, Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act, and Title 14, Chapter 2, Private Contracts, until after the owner is given a reasonable period of time to:

(i) establish compliance with Subsections 38-11-204(4)(a) and (4)(b) through an

informal proceeding, as set forth in Title 63G, Chapter 4, Administrative Procedures Act, commenced at the division within 30 days after the owner is served with summons in the foreclosure action; and

(ii) obtain a certificate of compliance or denial of certificate of compliance, as defined in Section 38-11-102.

(e) An owner applying for a certificate of compliance under Subsection (6)(d) shall send by certified mail to all claimants:

(i) a copy of the application for a certificate of compliance; and

(ii) all materials filed in connection with the application.

(f) The division shall notify all claimants listed in an owner's application for a certificate of compliance under Subsection (6)(d) of the issuance or denial of a certificate of compliance.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-702. Parties -- Consolidation of separate actions.

(1) In an action under this part, subject to the time restrictions under Subsection 38-1a-701(2):

(a) a claimant who is not contesting the claim of another claimant may join as a plaintiff;

(b) a claimant who fails or refuses to become a plaintiff may be made a defendant; and

(c) a claimant who is not made a party may intervene at any time before the final hearing.

(2) If separate actions are commenced under this part to enforce preconstruction or construction liens on the same property, the court may consolidate the actions and make all claimants parties to the consolidated action.

Enacted by Chapter 278, 2012 General Session

38-1a-703. Order of satisfaction if multiple liens on same property.

If liens are claimed against the same property the decree shall provide for their satisfaction in the following order:

(1) subcontractors who are laborers or mechanics working by the day or piece, but who have not furnished materials;

(2) all other subcontractors and all materialmen; and

(3) original contractors.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-704. Sale of property -- Redemption -- Disposition of proceeds.

(1) The court shall cause the property to be sold in satisfaction of the liens and costs as in the case of a foreclosure of a mortgage, subject to the same right of redemption.

(2) If the proceeds of sale after the payment of costs are not sufficient to satisfy the whole amount of liens included in the decree, then the proceeds shall be paid in the

order designated in Section 38-1a-703, and pro rata to the persons claiming in each class if the sum realized is insufficient to pay the persons of the class in full.

(3) Any excess sale proceeds remaining after the payment of all liens and costs shall be paid to the owner.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-705. Deficiency judgment.

A claimant whose preconstruction or construction lien is not paid in full through an enforcement action as provided in this part may:

- (1) have judgment for the unpaid balance entered against the person liable; and
- (2) execute on the judgment in the same manner as execution on judgments generally.

Enacted by Chapter 278, 2012 General Session

38-1a-706. Apportionment of costs -- Costs and attorney fees to subcontractor.

(1) Except as provided in Section 38-11-107, the court shall apportion costs between the owner and original contractor according to the right of the case.

(2) The court shall award a subcontractor with a valid preconstruction or construction lien:

- (a) all of the subcontractor's costs, including the costs of preparing and recording the notice of preconstruction or construction lien; and
- (b) the subcontractor's reasonable attorney fees incurred in preparing and recording the notice of preconstruction or construction lien.

Enacted by Chapter 278, 2012 General Session

38-1a-707. Attorney fees -- Offer of judgment.

(1) Except as provided in Section 38-11-107 and in Subsection (2), in any action brought to enforce any lien under this chapter the successful party shall be entitled to recover reasonable attorney fees, to be fixed by the court, which shall be taxed as costs in the action.

(2) A person who files a wrongful lien as provided in Section 38-1a-308 may not recover attorney fees under Subsection (1).

(3) (a) A person against whom an action is brought to enforce a preconstruction or construction lien may make an offer of judgment pursuant to Rule 68 of the Utah Rules of Civil Procedure.

(b) If the offer is not accepted and the judgment finally obtained by the offeree is not more favorable than the offer, the offeree shall pay the costs and attorney fees incurred by the offeror after the offer was made.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-801. Preconstruction and construction liens assignable -- Action by

assignee to enforce lien.

(1) A preconstruction lien or construction lien is assignable as any other chose in action.

(2) An assignee of a preconstruction lien or construction lien may, in the assignee's own name, commence and prosecute an action on the lien as provided in Part 7, Enforcement of Preconstruction and Construction Liens.

Enacted by Chapter 278, 2012 General Session

38-1a-802. Waiver or limitation of a lien right -- Forms -- Scope.

(1) As used in this section:

(a) "Check" means a payment instrument on a depository institution including:

- (i) a check;
- (ii) a draft;
- (iii) an order; or
- (iv) other instrument.

(b) "Depository institution" is as defined in Section 7-1-103.

(c) "Receives payment" means, in the case of a restrictive endorsement, a payee has endorsed a check and the check is presented to and paid by the depository institution on which it is drawn.

(2) Notwithstanding Section 38-1a-105, a claimant's written consent that waives or limits the claimant's lien rights is enforceable only if the claimant:

- (a) (i) executes a waiver and release that is signed by the claimant or the claimant's authorized agent; or
- (ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a check that is:
 - (A) signed by the claimant or the claimant's authorized agent; and
 - (B) in substantially the same form set forth in Subsection (4)(d); and
- (b) receives payment of the amount identified in the waiver and release or check that includes the restrictive endorsement:
 - (i) including payment by a joint payee check; and
 - (ii) for a progress payment, only to the extent of the payment.

(3) (a) Notwithstanding the language of a waiver and release described in Subsection (2), Subsection (3)(b) applies if:

- (i) the payment given in exchange for any waiver and release of lien is made by check; and
- (ii) the check fails to clear the depository institution on which it is drawn for any reason.

(b) If the conditions of Subsection (3)(a) are met:

- (i) the waiver and release described in Subsection (3)(a) is void; and
- (ii) the following will not be affected by the claimant's execution of the waiver and release:
 - (A) any lien;
 - (B) any lien right;
 - (C) any bond right;
 - (D) any contract right; or

(E) any other right to recover payment afforded to the claimant in law or equity.

(4) (a) A waiver and release given by a claimant meets the requirements of this section if it is in substantially the form provided in this Subsection (4) for the circumstance provided in this Subsection (4).

(b) A waiver and release may be in substantially the following form if the claimant is required to execute a waiver and release in exchange for or to induce the payment of a progress billing:

"UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT
Property Name: _____

Property Location: _____

Undersigned's Customer: _____

Invoice/Payment Application Number: _____

Payment Amount: _____

Payment Period: _____

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann., Title 14, Contractors' Bonds, or Section 63G-6a-1103 related to payment rights the undersigned has on the above described Property once:

(1) the undersigned endorses a check in the above referenced Payment Amount payable to the undersigned; and

(2) the check is paid by the depository institution on which it is drawn.

This waiver and release applies to a progress payment for the work, materials, equipment, or a combination of work, materials, and equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount. This waiver and release does not apply to any retention withheld; any items, modifications, or changes pending approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from this progress payment promptly to pay in full all the undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or combination of work, materials, and equipment that are the subject of this waiver and release.

Dated: _____

_____(Com pany
Name)

_____ By : _____

_____ Its: _____

_____ "

(c) A waiver and release may be in substantially the following form if the lien claimant is required to execute a waiver and release in exchange for or to induce the payment of a final billing:

"UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

Property Name: _____

Property Location: _____

Undersigned's Customer: _____

Invoice/Payment Application Number: _____

Payment Amount: _____

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann., Title 14, Contractors' Bonds, or Section 63G-6a-1103 related to payment rights the undersigned has on the above described Property once:

(1) the undersigned endorses a check in the above referenced Payment Amount payable to the undersigned; and

(2) the check is paid by the depository institution on which it is drawn.

This waiver and release applies to the final payment for the work, materials, equipment, or combination of work, materials, and equipment furnished by the undersigned to the Property or to the Undersigned's Customer.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from the final payment promptly to pay in full all the undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or combination of work, materials, and equipment that are the subject of this waiver and release.

Dated: _____

_____(Com pany
Name)

_____ By : _____

_____ Its: _____

_____ "

(d) A restrictive endorsement placed on a check to effectuate a waiver and release described in this Subsection (4) meets the requirements of this section if it is in substantially the following form:

"This check is a progress/ final payment for property described on this check sufficient for identification. Endorsement of this check is an acknowledgment by the endorser that the waiver and release to which the payment applies is effective to the extent provided in Utah Code Ann. Subsection 38-1a-802(4)(b) or (c) respectively."

(e) (i) If using a restrictive endorsement under Subsection (4)(d), the person

preparing the check shall indicate whether the check is for a progress payment or a final payment by circling the word "progress" if the check is for a progress payment, or the word "final" if the check is for a final payment.

(ii) If a restrictive endorsement does not indicate whether the check is for a progress payment or a final payment, it is considered to be for a progress payment.

(5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the enforcement of:

(i) an accord and satisfaction regarding a bona fide dispute; or

(ii) an agreement made in settlement of an action pending in any court or arbitration.

(b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or settlement:

(i) is in a writing signed by the claimant; and

(ii) specifically references the lien rights waived or impaired.

Renumbered and Amended by Chapter 278, 2012 General Session
Amended by Chapter 347, 2012 General Session

38-1a-803. Cancellation of preconstruction or construction lien -- Penalty for failure to cancel timely.

(1) After the full amount owing under a preconstruction or construction lien, including costs and cancellation fees, has been paid, a person interested in the property that is the subject of the lien may request the claimant to submit for recording with the office of each applicable county recorder a cancellation of the lien.

(2) Within 10 days after receiving a request under Subsection (1), the claimant shall submit to the office of each applicable county recorder a cancellation of the preconstruction or construction lien, as applicable.

(3) A claimant who fails to submit a cancellation within the time prescribed in Subsection (2) is liable to the person who requested the cancellation for \$100 for each day after the time prescribed in Subsection (2) that the cancellation is not submitted, or the person's actual damages, whichever is greater.

Enacted by Chapter 278, 2012 General Session

38-1a-804. Notice of release of lien and substitution of alternate security.

(1) The owner of any interest in a project property that is subject to a recorded preconstruction or construction lien, or any original contractor or subcontractor affected by the lien, who disputes the correctness or validity of the lien may submit for recording a notice of release of lien and substitution of alternate security:

(a) that meets the requirements of Subsection (2);

(b) in the office of each applicable county recorder where the lien was recorded;
and

(c) at any time before the date that is 90 days after the first summons is served in an action to foreclose the preconstruction or construction lien for which the notice under this section is submitted for recording.

(2) A notice of release of lien and substitution of alternate security recorded under Subsection (1) shall:

(a) meet the requirements for the recording of documents in Title 57, Chapter 3, Recording of Documents;

(b) reference the preconstruction or construction lien sought to be released, including the applicable entry number, book number, and page number; and

(c) have as an attachment a surety bond or evidence of a cash deposit that:

(i) (A) if a surety bond, is executed by a surety company that is treasury listed, A-rated by AM Best Company, and authorized to issue surety bonds in this state; or

(B) if evidence of a cash deposit, meets the requirements established by rule by the Department of Commerce in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(ii) is in an amount equal to:

(A) 150% of the amount claimed by the claimant under the preconstruction or construction lien or as determined under Subsection (7), if the lien claim is for \$25,000 or more;

(B) 175% of the amount claimed by the claimant under the preconstruction or construction lien or as determined under Subsection (7), if the lien claim is for at least \$15,000 but less than \$25,000; or

(C) 200% of the amount claimed by the claimant under the preconstruction or construction lien or as determined under Subsection (7), if the lien claim is for less than \$15,000;

(iii) is made payable to the claimant;

(iv) is conditioned for the payment of:

(A) the judgment that would have been rendered, or has been rendered against the project property in the action to enforce the lien; and

(B) any costs and attorney fees awarded by the court; and

(v) has as principal:

(A) the owner of the interest in the project property; or

(B) the original contractor or subcontractor affected by the lien.

(3) (a) Upon the recording of the notice of release of lien and substitution of alternate security under Subsection (1), the real property described in the notice shall be released from the preconstruction lien or construction lien to which the notice applies.

(b) A recorded notice of release of lien and substitution of alternate security is effective as to any amendment to the preconstruction or construction lien being released if the bond amount remains enough to satisfy the requirements of Subsection (2)(c)(ii).

(4) (a) Upon the recording of a notice of release of lien and substitution of alternate security under Subsection (1), the person recording the notice shall serve a copy of the notice, together with any attachments, within 30 days upon the claimant.

(b) If a suit is pending to foreclose the preconstruction or construction lien at the time the notice is served upon the claimant under Subsection (4)(a), the claimant shall, within 90 days after the receipt of the notice, institute proceedings to add the alternate security as a party to the lien foreclosure suit.

(5) The alternate security attached to a notice of release of lien shall be

discharged and released upon:

(a) the failure of the claimant to commence a suit against the alternate security within the same time as an action to enforce the lien under Section 38-1a-701;

(b) the failure of the lien claimant to institute proceedings to add the alternate security as a party to a lien foreclosure suit within the time required by Subsection (4)(b);

(c) the dismissal with prejudice of the lien foreclosure suit or suit against the alternate security as to the claimant; or

(d) the entry of judgment against the claimant in:

(i) a lien foreclosure suit; or

(ii) suit against the alternate security.

(6) If a copy of the notice of release of lien and substitution of alternate security is not served upon the claimant as provided in Subsection (4)(a), the claimant has six months after the discovery of the notice to commence an action against the alternate security, except that no action may be commenced against the alternate security after two years from the date the notice was recorded.

(7) (a) The owner of any interest in a project property that is subject to a recorded preconstruction or construction lien, or an original contractor or subcontractor affected by the lien, who disputes the amount claimed under a preconstruction or construction lien may petition the district court in the county in which the notice of lien is recorded for a summary determination of the correct amount owing under the lien for the sole purpose of providing alternate security.

(b) A petition under this Subsection (7) shall:

(i) state with specificity the factual and legal bases for disputing the amount claimed under the preconstruction or construction lien; and

(ii) be supported by a sworn affidavit and any other evidence supporting the petition.

(c) A petitioner under Subsection (7)(a) shall, as provided in Utah Rules of Civil Procedure, Rule 4, serve on the claimant:

(i) a copy of the petition; and

(ii) a notice of hearing if a hearing is scheduled.

(d) If a court finds a petition under Subsection (7)(a) insufficient, the court may dismiss the petition without a hearing.

(e) If a court finds a petition under Subsection (7)(a) sufficient, the court shall schedule a hearing within 10 days to determine the correct amount claimed under the preconstruction or construction lien for the sole purpose of providing alternate security.

(f) A claimant may:

(i) attend a hearing held under this Subsection (7); and

(ii) contest the petition.

(g) A determination under this section is limited to a determination of the amount claimed under a preconstruction or construction lien for the sole purpose of providing alternate security and does not conclusively establish:

(i) the amount to which the claimant is entitled;

(ii) the validity of the claim; or

(iii) any person's right to any other legal remedy.

(h) If a court, in a proceeding under this Subsection (7), determines that the

amount claimed under a preconstruction or construction lien is excessive, the court shall set the amount for the sole purpose of providing alternate security.

(i) In an order under Subsection (7)(h), the court shall include a legal description of the project property.

(j) A petitioner under this Subsection (7) may record a certified copy of any order issued under this Subsection (7) in the county in which the lien is recorded.

(k) A court may not award attorney fees for a proceeding under this Subsection (7), but shall consider those attorney fees in any award of attorney fees under any other provision of this chapter.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1b-101. Title.

This chapter is known as "Government Construction Projects."

Enacted by Chapter 278, 2012 General Session

38-1b-102. Definitions.

As used in this chapter:

- (1) "Alternate means" has the same meaning as defined in Section 38-1a-102.
- (2) "Construction project" has the same meaning as defined in Section 38-1a-102.
- (3) "Construction work" has the same meaning as defined in Section 38-1a-102.
- (4) "Designated agent" has the same meaning as defined in Section 38-1a-102.
- (5) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.
- (6) "Government project" means a construction project undertaken by or for:
 - (a) the state, including a department, division, or other agency of the state; or
 - (b) a county, city, town, school district, local district, special service district, community development and renewal agency, or other political subdivision of the state.
- (7) "Government project-identifying information" means:
 - (a) the lot or parcel number of each lot included in the project property that has a lot or parcel number; or
 - (b) the unique project number assigned by the designated agent.
- (8) "Original contractor" has the same meaning as defined in Section 38-1a-102.
- (9) "Owner" has the same meaning as defined in Section 38-1a-102.
- (10) "Owner-builder" has the same meaning as defined in Section 38-1a-102.
- (11) "Private project" means a construction project that is not a government project.
- (12) "Project property" has the same meaning as defined in Section 38-1a-102.
- (13) "Registry" has the same meaning as defined in Section 38-1a-102.

Enacted by Chapter 278, 2012 General Session

38-1b-201. Notice of commencement for a government project.

- (1) No later than 15 days after commencement of physical construction work at

a government project site, the original contractor, owner, or owner-builder shall file a notice of commencement with the registry.

(2) An original contractor, owner, or owner-builder on a government project may file a notice of commencement with the designated agent before the commencement of physical construction work on the project property.

(3) (a) If duplicate notices of commencement are filed, they shall be combined into one notice for each government project, and any notices filed relate back to the date of the earliest-filed notice of commencement for the project.

(b) A duplicate notice of commencement that is untimely filed relates back under Subsection (3)(a) if the earlier filed notice of commencement is timely filed.

(c) Duplicate notices of commencement shall be automatically linked by the designated agent.

(4) The designated agent shall assign each government project a unique project number that:

(a) identifies the project; and

(b) can be associated with all notices of commencement, preliminary notices, and notices of completion filed in connection with the project.

(5) A notice of commencement is effective only as to any construction work that is provided after the notice of commencement is filed.

(6) (a) A notice of commencement shall include:

(i) the name, address, and email address of the owner;

(ii) the name, address, and email address of the original contractor;

(iii) the name, address, and email address of the surety providing any payment bond for the project or, if none exists, a statement that a payment bond was not required for the work being performed;

(iv) (A) the address of the project property if the project property can be reasonably identified by an address; or

(B) the name and general description of the location of the project property, if the project property cannot be reasonably identified by an address; and

(v) the government project-identifying information.

(b) A notice of commencement may include a general description of the project.

(7) If a notice of commencement for a government project is not filed within the time set forth in Subsection (1), then Section 38-1b-202 and Section 38-1b-203, with respect to the filing of a notice of completion, do not apply.

(8) (a) The burden is upon any person seeking to enforce a notice of commencement to verify the accuracy of information in the notice of commencement and prove that the notice of commencement is filed timely and meets all of the requirements of this section.

(b) A substantial inaccuracy in a notice of commencement renders the notice of commencement invalid.

(c) A person filing a notice of commencement by alternate means is responsible for verifying and changing any incorrect information in the notice of commencement before the expiration of the time period during which the notice is required to be filed.

38-1b-202. Preliminary notice on government project.

(1) (a) Except for a person who has a contract with an owner or an owner-builder or a laborer compensated with wages, a subcontractor on a government project shall file a preliminary notice with the registry by the later of:

(i) 20 days after the subcontractor commences providing construction work to the construction project; and

(ii) 20 days after the filing of a notice of commencement, if the subcontractor's work commences before the filing of the first notice of commencement.

(b) Subsection (1) does not exempt the following from complying with the requirements of this section:

(i) a temporary labor service company or organization;

(ii) a professional employer company or organization; or

(iii) any other entity that provides labor.

(2) A preliminary notice filed within the period described in Subsection (1) is effective as to all construction work that the subcontractor provides to the construction project, including construction work that the subcontractor provides to more than one contractor or subcontractor.

(3) (a) If more than one notice of commencement is filed for a project, a person may attach a preliminary notice to any notice of commencement filed for the project.

(b) A preliminary notice attached to an untimely notice of commencement is valid if there is also a valid and timely notice of commencement for the project.

(4) A preliminary notice filed after the period prescribed by Subsection (1) becomes effective on the date that is five days after the date on which the preliminary notice is filed.

(5) Except as provided in Subsection (8), failure to file a preliminary notice within the period required by Subsection (1) precludes a person from maintaining any claim for compensation earned for construction work provided to the construction project before the the date that is five days after the preliminary notice was filed, except as against the person with whom the person contracted.

(6) A preliminary notice on a government project shall include:

(a) the government project-identifying information;

(b) the name, address, and telephone number of the person providing the construction work;

(c) the name and address of the person who contracted with the claimant for the providing of construction work;

(d) the name of the record or reputed owner;

(e) the name of the original contractor under which the claimant is performing or will perform its work; and

(f) the address of the project property or a description of the location of the project property.

(7) Upon request, an original contractor shall provide a subcontractor with the number assigned to the project by the designated agent.

(8) A person who provides construction work before the filing of a notice of commencement need not file a preliminary notice to maintain any right the person would otherwise have, if the notice of commencement is filed more than 15 days after the day on which the person begins work on the project.

(9) The burden is upon the person filing a preliminary notice to prove that the person has substantially complied with the requirements of this section.

(10) Subsections 38-1a-501(1)(e) and (f) and (3) apply to a preliminary notice on a government project under this section to the same extent that those subsections apply under Section 38-1a-501 to a preliminary notice on a project that is not a government project.

Renumbered and Amended by Chapter 278, 2012 General Session
Amended by Chapter 330, 2012 General Session
Amended by Chapter 369, 2012 General Session

38-1b-203. Notice of intent to obtain final completion and notice of completion.

Sections 38-1a-506 and 38-1a-507 apply to a government project to the same extent as those sections apply to a construction project that is subject to Chapter 1a, Preconstruction and Construction Liens.

Enacted by Chapter 278, 2012 General Session

38-2-1. Lien on livestock -- For feed and care.

Every ranchman, farmer, agistor, herder of cattle, tavern keeper or livery stable keeper to whom any domestic animals shall be entrusted for the purpose of feeding, herding or pasturing shall have a lien upon such animals for the amount that may be due him for such feeding, herding or pasturing, and is authorized to retain possession of such animals until such amount is paid.

No Change Since 1953

38-2-2. Liens of hotels and boardinghouse keepers.

Every innkeeper, hotel keeper, boardinghouse or lodginghouse keeper shall have a lien on the baggage and other property in and about such inn belonging to or under control of his guests or boarders for the proper charges due him for their accommodation, board and lodging, for money paid for or advanced to them, and for such other extras as are furnished at their request. The innkeeper, hotel keeper, boardinghouse or lodginghouse keeper may detain such baggage and other property until the amount of such charge is paid, and the baggage and other property shall not be exempt from attachment or execution until the hotel or boardinghouse keeper's lien and the costs of enforcing it are satisfied.

Amended by Chapter 61, 1953 General Session

38-2-3. Repairman's lien on personal property -- Lien subject to rights of secured parties.

Every person who shall make, alter or repair, or bestow labor upon, any article of personal property at the request of the owner or other person entitled to possession thereof shall have a lien upon such article for the reasonable value of the labor

performed and materials furnished and used in making such article or in altering or repairing the same, and may retain possession thereof until the amount so due is paid; provided such lien and right to possession shall be subject and subordinate to the rights and interests of any secured parties in such personal property unless such secured party has requested such person to make, alter or repair or bestow labor upon such property.

Amended by Chapter 272, 1977 General Session

**38-2-3.1. Special lien on personal property for services rendered --
General lien of dry cleaning establishments, laundries, and shoe repair shops.**

Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or owners thereof, by labor or skill performed upon said personal property at the request or order of said owner, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner or owners for such service; and every laundry proprietor, person conducting a laundry business, dry cleaning establishment, proprietor and person conducting a dry cleaning establishment, shoe repair establishment proprietor and person conducting a shoe repair establishment has a general lien, dependent on possession, upon all personal property in his hands belonging to a customer, for the balance due him from such customer for laundry work, and for the balance due him for dry cleaning work, and for the balance due him for shoe repair work; but nothing in this section shall be construed to confer a lien in favor of a wholesale dry cleaner on materials received from a dry cleaning establishment proprietor or a person conducting a dry cleaning establishment. The terms "person" and "proprietor" as used in this section shall include an individual, firm, partnership, association, corporation and company.

Enacted by Chapter 62, 1953 General Session

38-2-3.2. Sale of unclaimed personal property.

(1) Any garments, clothing, shoes, wearing apparel or household goods, remaining in the possession of a person, on which cleaning, pressing, glazing, laundry or washing or repair work has been done or upon which alterations or repairs have been made or on which materials or supplies have been used or furnished by said person holding possession thereof, for a period of 90 days or more after the completion of such services or labors, may be sold by said person holding possession, to pay the unpaid reasonable or agreed charges therefor and the costs of notifying the owner or owners as hereinafter provided. However, the person to whom such charges are payable and owing shall first notify the owner or owners of such property of the time and place of such sale; and provided further, that property that is to be placed in storage after any of the services or labors mentioned herein shall not be affected by the provisions of this Subsection (1).

(2) All garments, clothing, shoes, wearing apparel on which any of these services or labors mentioned in Subsection (1) have been performed and then placed in storage by agreement, and remaining in the possession of a person without the reasonable or agreed charges having been paid for a period of 12 months may be sold

to pay such charges and costs of notifying the owner or owners as hereinafter provided. However, the person to whom the charges are payable and owing shall first notify the owner or owners of such property of the time and the place of sale, and provided, further, that persons operating as warehouses or warehousemen shall not be affected by this Subsection (2).

(3) (a) (i) The mailing of a properly stamped and registered letter, with a return address marked thereon, addressed to the owner or owners of the property, at their address given at the time of delivery of the property to such person to render any of the services or labors set out in this article, or if no address was so given, at their address if otherwise known, stating the time and place of sale, shall constitute notice as required in this section.

(ii) The notice required in Subsection (3)(a)(i) shall be mailed at least 20 days before the date of sale.

(iii) The cost of mailing the letter required under Subsection (3)(a)(i) shall be added to the charges.

(b) (i) If no address was given at the time of delivery of the property, or if the address of the owner or owners is not otherwise known, such person who has performed the services or labors as aforesaid shall cause to be published a notice of the time and place of sale:

(A) at least once in a daily or weekly newspaper in the city, town, and county, wherein such property was delivered to such person at least 20 days before the date of sale; and

(B) in accordance with Section 45-1-101 for at least 20 days before the date of sale.

(ii) Such notice constitutes notice as required in this section if notice cannot be mailed as provided in Subsection (3)(b)(i).

(iii) The costs of one such publication shall be added to the charges.

(4) (a) The person to whom the charges are payable and owing shall from the proceeds of the sale, deduct the charges due plus the costs of notifying the owner or owners and shall immediately thereafter mail to the owner or owners thereof at their address, if known, a notice of the holding of such sale and the amount of the overplus, if any, due the owner or owners. At any time within 12 months after such notice, such person shall, upon demand by the owner or owners, pay to the owner or owners such overplus in his hands.

(b) If no such demand is made within such 12-month period, or, if the address of the owner or owners is unknown and no demand is made by the owner or owners within 12 months after the date of sale, then such overplus shall become the property of a person who has performed the services or labors as provided in Subsection (1).

(5) Each person taking advantage of this section must keep posted in a prominent place in his receiving office or offices at all times two notices which shall read as follows:

"All articles, cleaned, pressed, glazed, laundered, washed, altered, or repaired, and not called for in 90 days will be sold to pay charges."

"All articles stored by agreement and charges not having been paid for 12 months will be sold to pay charges."

(6) The rights and benefits provided for in this section shall be and are in

addition to the rights and benefits provided for in Section 38-2-4.

Amended by Chapter 388, 2009 General Session

38-2-4. Disposal of property by lienholder -- Procedure.

(1) Any party holding a lien upon personal property as provided in this chapter may dispose of the property in the manner provided in Subsection (2).

(2) (a) The lienor shall give notice to the owner of the property, to the customer as indicated on the work order, and to all other persons claiming an interest in or lien on it, as disclosed by the records of the Motor Vehicle Division, lieutenant governor's office, or of corresponding agencies of any other state in which the property appears registered or an interest in or lien on it is evidenced if known by the lienor.

(b) The notice shall be sent by certified mail at least 30 days before the proposed or scheduled date of any sale and shall contain:

- (i) a description of the property and its location;
- (ii) the name and address of the owner of the property, the customer as indicated on the work order, and any person claiming an interest in or lien on the property;
- (iii) the name, address, and telephone number of the lienor;
- (iv) notice that the lienor claims a lien on the property for labor and services performed and interest and storage fees charged, if any, and the cash sum which, if paid to the lienor, would be sufficient to redeem the property from the lien claimed by the lienor;
- (v) notice that the lien claimed by the lienor is subject to enforcement under this section and that the property may be sold to satisfy the lien;
- (vi) the date, time, and location of any proposed or scheduled sale of the property and whether the sale is private or public, except that no property may be sold earlier than 45 days after completion of the repair work; and
- (vii) notice that the owner of the property has a right to recover possession of the property without instituting judicial proceedings by posting bond.

(3) If the owner of the property is unknown or his whereabouts cannot be determined, or if the owner or any person notified under Subsection (2) fails to acknowledge receipt of the notice, the lienor, at least 20 days before the proposed or scheduled date of sale of the property, shall publish the notice required by this section once in a newspaper circulated in the county where the vehicle is held.

(4) A lienor may have his property released from any lien claimed on it under this chapter by filing with the clerk of a justice court or district court a cash or surety bond, payable to the person claiming the lien, and conditioned for the payment of any judgment that may be recovered on the lien, with costs, interest, and storage fees.

(5) (a) The lienor has 60 days after receiving notice that the lienor has filed the bond provided in Subsection (4) to file suit to foreclose his lien.

(b) If the lienor fails to timely file an action, the clerk of the court shall release the bond.

(6) Property subject to lien enforcement under this section may be sold by the lienor at public or private sale; however, in the case of a private sale, every aspect of the sale, including the method, manner, time, place, and terms shall be commercially

reasonable.

(7) This section may not be construed to affect an owner's right to redeem his property from the lien at any time prior to sale by paying the amount claimed by the lienor for work done, interest, and storage fees charged and any costs incurred by the repair shop for using enforcement procedures under this section.

Amended by Chapter 198, 1996 General Session

38-2-5. Action for deficiency.

Nothing in this chapter shall take away the right of action of the party to whom such lien is given for his charges, or for any residue thereof, after such sale of the property.

No Change Since 1953

38-2-6. Mold liens.

Title 13, Chapter 31, Mold Retention and Lien Act, governs liens on molds in the possession of a molder as those terms are defined in Section 13-31-102.

Enacted by Chapter 349, 1998 General Session

38-2-7. Compensation -- Attorney's lien.

(1) The compensation of an attorney is governed by agreement between the attorney and a client, express or implied, which is not restrained by law.

(2) An attorney shall have a lien for the balance of compensation due from a client on any money or property owned by the client that is the subject of or connected with work performed for the client, including, but not limited to:

(a) any real or personal property that is the subject of or connected with the work performed for the client;

(b) any funds held by the attorney for the client, including any amounts paid as a retainer to the attorney by the client; and

(c) any settlement, verdict, report, decision, or judgment in the client's favor in any matter or action in which the attorney assisted, including any proceeds derived from the matter or action, whether or not the attorney is employed by the client at the time the settlement, verdict, report, decision, or judgment is obtained.

(3) An attorney's lien commences at the time of employment of the attorney by the client.

(4) An attorney may enforce a lien under this section by moving to intervene in a pending legal action in which the attorney has assisted or performed work, or by filing a separate legal action. An attorney may not move to intervene in an action or file a separate legal action to enforce a lien before 30 days has expired after a demand for payment has been made and not been complied with.

(5) An attorney may file a notice of lien in a pending legal action in which the attorney has assisted or performed work for which the attorney has a lien under this section. In addition, an attorney may file a notice of lien with the county recorder of the county in which real property that is subject to a lien under this section is located. A

notice of lien shall include the following:

- (a) the name, address, and telephone number of the attorney claiming the lien;
- (b) the name of the client who is the owner of the property subject to the lien;
- (c) a verification that the property is the subject of or connected with work performed by the attorney for the client and that a demand for payment of amounts owed to the attorney for the work has been made and not been paid within 30 days of the demand;

- (d) the date the attorney first provided services to the client;

- (e) a description of the property, sufficient for identification; and

- (f) the signature of the lien claimant and an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents.

(6) Within 30 days after filing the notice of lien, the attorney shall deliver or mail by certified mail to the client a copy of the notice of lien.

(7) Any person who takes an interest in any property, other than real property, that is subject to an attorney's lien with actual or constructive knowledge of the attorney's lien, takes his or her interest subject to the attorney's lien. An attorney's lien on real property has as its priority the date and time when a notice of lien is filed with the county recorder of the county in which real property that is subject to a lien under this section is located.

(8) This section does not alter or diminish in any way an attorney's common law retaining lien rights.

(9) This section does not authorize an attorney to have a lien in the representation of a client in a criminal matter or domestic relations matter where a final order of divorce has not been secured unless:

- (a) the criminal matter has been concluded or the domestic relations matter has been concluded by the securing of a final order of divorce or the attorney/client relationship has terminated; and

- (b) the client has failed to fulfill the client's financial obligation to the attorney.

Renumbered and Amended by Chapter 4, 2001 General Session

Repealed and Re-enacted by Chapter 360, 2001 General Session

38-3-1. Lien for rent due.

Except as hereinafter provided, lessors shall have a lien for rent due upon all nonexempt property of the lessee brought or kept upon the leased premises so long as the lessee shall occupy said premises and for 30 days thereafter.

No Change Since 1953

38-3-2. Preference of lessor's lien over other liens and claims --

Exceptions -- Limit.

(1) A lien under this chapter has preference over all other liens or claims except:

- (a) claims for taxes;

- (b) preconstruction or construction liens under Title 38, Chapter 1a,

Preconstruction and Construction Liens;

- (c) perfected security interests; and

(d) claims of employees for wages which are preferred by law.

(2) If a lessee is adjudicated as bankrupt or makes an assignment for the benefit of creditors, or if the lessee's property is put into the possession of a receiver, a lien under this chapter is limited to the rent for 90 days before the adjudication, assignment, or receivership.

Amended by Chapter 278, 2012 General Session

38-3-3. Attachment in aid of lien.

Whenever any rent shall be due and unpaid under a lease, or the lessee shall be about to remove his property from the leased premises, the lessor may have the personal property of the lessee which is upon the leased premises and subject to such lien attached without other ground for such attachment.

No Change Since 1953

38-3-4. Attachment -- Affidavit and bond.

The lessor shall before the issue of such writ of attachment file a complaint, and an affidavit duly sworn to setting forth the amount of rent due over and above all offsets and counterclaims and a brief description of the leased premises, and shall further state, under oath that such writ of attachment is not sued out for the purpose of vexing or harassing the lessee; and the person applying for such writ of attachment shall execute and file a bond as in other cases of attachment.

No Change Since 1953

38-3-5. When attachment will issue -- Determination of priorities.

Upon the filing of such complaint, affidavit and bond it shall be the duty of the court wherein the same are filed to issue a writ of attachment to the proper officer, commanding him to seize the property of the defendant subject to such lien, or so much thereof as will satisfy the demand, and to make a determination of the priorities of the claims, liens, and security interests in such property.

Amended by Chapter 272, 1977 General Session

38-3-6. Execution of writ of attachment.

It shall be the duty of the officer to whom the writ of attachment is directed to seize the property of such lessee subject to such lien, or as much thereof as shall be necessary to satisfy such debt and costs, and to keep the same until the determination of the action, unless the property is sooner released by bond or the attachment is discharged.

No Change Since 1953

38-3-7. Release of attachment -- Bond.

A bond for the release of the attached property may be given, and motion to

discharge the attachment may be made, as provided in the Code of Civil Procedure in cases of attachment.

No Change Since 1953

38-3-8. When chapter not applicable.

This chapter shall not be applicable to a written lease for a term of years in which, as part of the consideration thereof, the lessee or assigns shall erect a building or improvements upon the leased premises.

No Change Since 1953

38-4-4. Unclaimed shipments -- Delivery to warehouseman.

Whenever any railroad company or other common carrier, except an express company, shall have transported any baggage or freight to the place of consignment within this state, and the owner, consignee or person entitled to receive the same shall omit, for the period of 60 days after the arrival of the baggage or freight at the place of consignment, to accept and remove the same and pay the charges thereon, it shall be lawful for such carrier to deliver such freight for storage to some person or company conducting the business of storing goods, subject to the charges thereon for transportation, storage by the carrier and conveyance and drayage to the place of storage, accompanied by a copy of the bill of lading in case of freight, or, in case of baggage, by a statement of the place from which, and the place to which, such baggage was transported, together with the check numbers; and any carrier whose route reaches into this state may collect and store as aforesaid at any station in this state the unclaimed freight from all or any points or stations on its line within this state.

No Change Since 1953

38-5-1. Filing with clerk of district court -- Recording with county recorder -- Effect.

(1) (a) A person may file in the office of the clerk of a state district court a transcript of a judgment or decree rendered in the district court of the United States within the state.

(b) A decree or judgment filed in accordance with Subsection (1)(a) has the same force and effect as a judgment rendered in a state district court.

(2) Except as provided in Subsection (3), if a person records a judgment or an abstract of judgment or decree under Subsection (1) in the office of the county recorder, that judgment or decree becomes a lien in accordance with Section 78B-5-202.

(3) A state agency is exempt from the recording requirement of Subsection (2).

(4) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the office of a county recorder, a person shall, in the office of the county recorder of each county in which an instrument creating the lien is recorded, record a document releasing, assigning, renewing, or extending the lien.

(b) The document described in Subsection (4)(a) shall include:

(i) the date of the release, assignment, renewal, or extension;

- (ii) the name of any judgment creditor, debtor, assignor, or assignee; and
- (iii) for the county in which the document is recorded in accordance with Subsection (4)(a):
 - (A) the date on which the instrument creating the lien was recorded in that county's office of the county recorder; and
 - (B) in accordance with Section 57-3-106, that county recorder's entry number and book and page of the recorded instrument creating the judgment lien.

Amended by Chapter 88, 2011 General Session

38-5-2. Judicial lien against water rights and related assets of a mutual benefit corporation.

- (1) As used in this section:
 - (a) "Judicial lien" is defined in Section 16-6a-119.
 - (b) "Mutual benefit corporation" is defined in Section 16-6a-102.
 - (c) "Water rights and related assets" is defined in Section 16-6a-119.
- (2) A judicial lien recorded on or after May 12, 2009 against the water rights and related assets of a mutual benefit corporation is subject to Section 16-6a-119.

Enacted by Chapter 37, 2009 General Session

38-6-1. Notice by recording with county recorder.

Notices of liens for taxes payable to the United States of America, other federal liens created under acts of Congress or regulations adopted pursuant to those acts, and certificates discharging those liens, shall be recorded in the office of the county recorder of the county within which any property subject to the lien is situated.

Amended by Chapter 168, 1997 General Session

38-6-2. Recorder's duties.

When a notice of the lien is recorded, the county recorder shall forthwith enter the notice of lien in an alphabetical federal lien index, or by grantor and grantee index, showing the name and residence of the taxpayer named in the notice, the collector's serial number of the notice, the date and hour of recording, and the amount of the lien with interest, penalties, and costs. The county recorder shall record the "Federal Lien Notices," mail the original document to the person recording the notice, and, if any notice so filed contains a legal description, index the lien against the real property described in the file.

Amended by Chapter 168, 1997 General Session

38-6-3. Recording of certificate of discharge.

When a certificate of discharge of any federal lien issued by the proper officer is recorded in the office of the county recorder where the notice of lien is recorded, the recorder shall enter the certificate of discharge with date of recording in the federal lien index or grantor and grantee index and return the original document to the person

recording. If the lien, when recorded, contained a legal description of real property, the recorder shall require that the certificate of discharge contain the legal description. The recorder shall index the certificate of discharge to that property.

Amended by Chapter 168, 1997 General Session

38-6-4. County to furnish indexes and files.

The federal lien index and file for federal lien notices shall be furnished to the county recorders in the manner provided by law for the furnishing of books in which deeds are recorded.

Amended by Chapter 121, 1990 General Session

38-7-1. Lien of hospital on judgment, settlement, or compromise in certain accident cases authorized.

(1) (a) Except as provided in Subsection (3), a hospital located within the state that furnishes emergency, medical, or other service to a patient injured by reason of an accident is entitled to assert a lien upon that portion of the judgment, settlement, or compromise going or belonging to the patient, or, in the case of death, to the patient's heirs or personal representatives, less the amount paid by the patient, or on behalf of the patient by heirs or personal representatives, for attorney fees, court costs, and other necessary expenses incidental to obtaining the judgment, settlement, or compromise.

(b) No reduction of the asserted lien amount is allowed other than the amount paid by the patient, or the patient's heirs, or personal representatives for attorney fees, court costs, and other necessary expenses incidental to litigation, unless otherwise agreed to in writing by the lien claimant.

(c) The hospital lien does not apply to a judgment, settlement, or compromise where the amount is \$100 or less.

(2) A hospital may file a lien described in Subsection (1) for the amount of the reasonable, usual, and necessary hospital charges for treatment, care, and maintenance of the injured party in the hospital up to the date of payment of the damages.

(3) (a) Except as provided in Subsection (3)(b), a hospital may not assert a lien under Subsection (1) if the services provided by the hospital are covered by workers' compensation or private health insurance.

(b) (i) A hospital that provides a service described in Subsection (3)(a) may assert a lien under Subsection (1) if:

(A) the private health insurer denies coverage; or

(B) the private health insurer does not pay the hospital within 180 days after the day on which the hospital bills the private health insurer.

(ii) A lien asserted under Subsection (3)(b)(i)(B) shall be withdrawn when the private health insurer pays the contracted amount, or, in the event there is no contract, the amount agreed to by the private health insurer and the hospital for the service rendered.

(iii) A hospital that provides a service described in Subsection (3)(a) may assert a lien under Subsection (1) for a copayment or deductible owed by the patient if the

amount of the copayment or deductible conforms with any contractual discount provided by the hospital to the insurer.

Amended by Chapter 273, 2013 General Session

38-7-2. Notice of lien required -- Filing with district court -- Mailing to injured person, heirs or legal representative, and insurance carrier.

A hospital lien upon damages recovered or to be recovered for personal injuries or death shall be effective if:

(1) a verified written notice is filed in the district court of the county in which the hospital asserting the lien is located containing:

(a) an itemized statement of the services rendered to the injured person and the dates of the services;

(b) the name and address of the hospital making the claim;

(c) the name of the person, firm, or corporation alleged to be liable to the injured party for the injuries and damages sustained; and

(d) the full name and address of the injured person;

(2) the hospital sends by certified mail with return receipt requested, prior to the payment of any money to the injured person or his attorney or heirs or legal representatives as compensation for the injuries and/or damages sustained, a copy of the written notice, together with a statement of the date of filing, to the person, firm, or corporation alleged to be liable to the injured party for the injuries and/or damages sustained; and

(3) the hospital mails a copy of the written notice by certified mail with return receipt requested to the home office of any insurance carrier that has insured the person, firm, or corporation against liability, if the name and address is known.

Amended by Chapter 167, 1996 General Session

38-7-2.5. Failure to notify -- Effect -- Penalty.

(1) (a) A person who fails to meet the notice requirements of Subsections 38-7-2(1) and (2) is precluded from receiving an award of costs and attorneys' fees from the person against whom a notice of lien has been filed in an action to enforce the lien if costs and attorneys' fees are authorized by contract or statute.

(b) Subsection (1)(a) does not create a right to costs and attorneys' fees.

(2) In addition to the penalties provided in Subsection (1)(a), a lien claimant who, within 20 days from the date of receiving notice of noncompliance with the notice requirements of Subsection 38-7-2(1) or (2), willfully refuses to release the notice of lien or record the lien in compliance with Section 38-7-2 is liable to the person against whom the notice of lien was filed for \$1,000 or for treble damages, whichever is greater.

(3) Failure to meet the notice requirements of Subsections 38-7-2(1) and (2) does not:

(a) invalidate any lien arising at common law or in equity or by any statute of this state; or

(b) affect the rules of priority provided in Title 70A, Chapter 9a, Uniform Commercial Code -- Secured Transactions.

Amended by Chapter 252, 2000 General Session

38-7-3. Parties or insurance carrier making payment liable for satisfaction of lien -- Enforcement of lien.

(1) Any person, firm or corporation, including an insurance carrier, making any payment to a patient or to his attorney, heirs or legal representative as compensation for the injuries and/or damages sustained, after the filing and, if applicable, receipt of written notice of the lien, as aforesaid, and without paying the hospital asserting the lien the amount of its lien or that portion of the lien which can be satisfied out of the money due under any final judgment or contract of compromise or settlement, less payment of the amount of any prior liens, shall be liable to the hospital for the amount that the hospital was entitled to receive.

(2) Liability of the person, firm or corporation for the satisfaction of the hospital lien shall continue for a period of one year from and after the date of any payment of any money to the patient, his heirs or legal representatives as damages or under a contract of compromise or settlement. Any hospital may enforce its lien by a suit at law against the person, firm or corporation making the payment. In the event of a suit to enforce a lien the hospital may recover a reasonable attorney's fee and the costs of filing and recording the lien.

Enacted by Chapter 75, 1965 General Session

38-7-4. Hospital lien docket provided by district court -- Contents.

Every district court shall, at the expense of the county, provide and maintain a suitable bound book to be called the hospital lien docket, and in which shall be entered any hospital lien claim filed. The district court shall enter the name of the injured person, the name of the person, firm, or corporation alleged to be liable for the injuries and damages, the date and place of the accident, and the name of the hospital or other institution making the claim. The district court shall also maintain a proper index of the hospital lien docket under the name of the injured person.

Amended by Chapter 167, 1996 General Session

38-7-5. Release of lien by hospital -- Execution and filing.

The hospital shall, upon receipt of payment of the lien or the portion recoverable under the lien, execute and file, at the expense of the hospital, a release of lien.

Enacted by Chapter 75, 1965 General Session

38-7-7. Interest of hospital in claim settlement limited.

Nothing in this act shall be construed to permit any hospital to be a party to or to have any interest in the amount or manner of any settlement of any claim on which a lien has been filed other than the lien rights as provided in this act.

Enacted by Chapter 75, 1965 General Session

38-7-8. Short title.

This act may be known as the Hospital Lien Law.

Enacted by Chapter 75, 1965 General Session

38-8-1. Definitions.

As used in this chapter:

- (1) "Certified mail" means:
 - (a) a method of mailing that is offered by the United States Postal Service and provides evidence of mailing; or
 - (b) a method of mailing that is accompanied by a certificate of mailing executed by the individual who caused the notice to be mailed.
- (2) "Default" means the failure to perform in a timely manner any obligation or duty described in this chapter or the rental agreement.
- (3) "Email" means an electronic message or an executable program or computer file that contains an image of a message that is transmitted between two or more computers or electronic terminals, including electronic messages that are transmitted within or between computer networks.
- (4) "Last known address" means the postal address provided by an occupant in a rental agreement or, if the occupant provides a subsequent written notice of a change of address, the postal address provided in the written notice of a change of address.
- (5) "Last known email address" means the email address provided by an occupant in a rental agreement or, if the occupant provides a subsequent written notice of a change of address, the email address provided in the written notice of a change of address.
- (6) "Occupant" means a person, or the person's sublessee, successor, or assignee, entitled to the use of a storage space at a self-service storage facility under a rental agreement, to the exclusion of others.
- (7) "Owner" means:
 - (a) the owner, operator, lessor, or sublessor of a self-service storage facility;
 - (b) an agent of a person described in Subsection (11)(a); or
 - (c) any other person authorized by a person described in Subsection (11)(a) to manage the facility or to receive rent from an occupant under a rental agreement.
- (8) "Personal property" means movable property not affixed to land and includes goods, merchandise, and household items.
- (9) "Rental agreement" means any written agreement or lease that establishes or modifies the terms, conditions, rules, or any other provisions relating to the use and occupancy of a unit or space at a self-service storage facility.
- (10) (a) "Self-service storage facility" means real property designed and used for the purpose of renting or leasing individual storage space to occupants who have access to the facility for the purpose of storing personal property.
 - (b) "Self-service storage facility" does not include:
 - (i) a warehouse described in Section 70A-7a-102;
 - (ii) real property used for residential purposes; or
 - (iii) a facility that issues a warehouse receipt, bill of lading, or other document of title for the personal property stored at the facility.

(11) "Vehicle" means personal property required to be registered with the Motor Vehicle Division pursuant to Title 41, Chapter 1a, Part 2, Registration, Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act.

Amended by Chapter 163, 2013 General Session

38-8-2. Lien against stored property -- Attachment and duration -- Search for financing statement prerequisite to enforcement of lien.

(1) When an owner and an occupant enter into a rental agreement, the owner and the owner's heirs, executors, administrators, successors, and assigns have a lien upon all personal property located at the self-service storage facility for rent, labor, or other charges, present or future, in relation to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale under this chapter.

(2) The lien described in Subsection (1) attaches on the date the personal property is brought to the self-service storage facility and continues so long as the owner retains possession and until any default is corrected or a sale pursuant to a default is conducted to satisfy the lien.

(3) A rental agreement shall state that:

(a) an owner is entitled to sell all personal property stored at the self-service storage facility pursuant to the rental agreement if the occupant is in default for a continuous 30-day period; and

(b) the occupant shall disclose to the owner any lienholders that have an interest in the property that will be stored at the self-service storage facility.

(4) If a rental agreement states a maximum, aggregate value of the personal property that may be stored at the occupant's storage space, the occupant may not assert that the value of the personal property actually stored at the occupant's storage space exceeds the maximum amount stated in the rental agreement.

(5) (a) Before an owner takes enforcement action under Section 38-8-3, the owner shall determine if a financing statement filed in accordance with Title 70A, Chapter 9a, Part 5, Filing, has been filed with the Division of Corporations and Commercial Code concerning the property to be sold.

(b) A security interest evidenced by a financing statement filed in accordance with Title 70A, Chapter 9a, Part 5, Filing, has priority over the lien provided by this section.

Amended by Chapter 163, 2013 General Session

38-8-3. Enforcement of lien -- Notice requirements -- Sale procedure and effect.

(1) An owner may enforce a lien described in Section 38-8-2 against an occupant if:

(a) the occupant is in default for a continuous 30-day period; and

(b) the owner provides written notice of the owner's intent to enforce the lien, in accordance with the requirements of this section, to:

(i) the occupant;

(ii) each lienholder disclosed by the occupant under Subsection 38-8-2(3)(b);
(iii) each person that has filed a valid financing statement with the Division of Corporations and Commercial Code; and
(iv) each person identified as a lienholder in the records of the Motor Vehicle Division.

(2) An owner shall provide the written notice described in Subsection (1)(b):

- (a) in person;
- (b) by certified mail, to the person's last known address; or
- (c) subject to Subsection (3), by email, to the person's last known email address.

(3) If an owner sends a notice described in Subsection (2) by email and does not receive a response, return receipt, or delivery confirmation from the email address to which the notice was sent within three business days after the day on which the notice was sent, the owner shall deliver the notice in person or by certified mail to the person's last known address.

(4) A written notice described in Subsection (1)(b) shall include:

(a) an itemized statement of the owner's claim showing the sum due at the time of the notice and the date when the sum became due;

(b) a brief description of the personal property subject to the lien that permits the person to identify the property, unless the property is locked, fastened, sealed, tied, or otherwise stored in a manner that prevents immediate identification of the property;

(c) if permitted by the terms of the rental agreement, a notice that the occupant may not access the occupant's personal property until the occupant complies with the requirements described in Subsection (9);

(d) the name, street address, and telephone number of the owner or the individual the occupant may contact to respond to the notification;

(e) a demand for payment within a specified time not less than 15 days after the day on which the notice is delivered; and

(f) a conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale and will be sold at a specified time and place.

(5) A notice under this section shall be presumed delivered when it is deposited with the United States Postal Service and properly addressed with postage prepaid.

(6) (a) After the expiration of the time given in the notice, the owner shall publish an advertisement of the sale of the personal property subject to the lien once in a newspaper of general circulation in the county where the self-service storage facility is located.

(b) An advertisement described in Subsection (6)(a) shall include:

(i) the address of the self-service storage facility and the number, if any, of the space where the personal property is located;

(ii) the name of the occupant; and

(iii) the time, place, and manner of the sale, which shall take place not sooner than 15 days after the day on which the sale is advertised under Subsection (6)(a).

(7) A sale of the personal property shall conform to the terms of the notice provided for in this section.

(8) A sale of the personal property shall be held at the self-service storage facility, at the nearest suitable place to where the personal property is held or stored, or

online.

(9) Before a sale of personal property under this section, the occupant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section and thereby redeem the personal property; upon receipt of this payment, the owner shall return the personal property, and thereafter the owner shall have no liability to any person with respect to that personal property.

(10) A purchaser in good faith of the personal property sold to satisfy a lien as provided for in this chapter takes the property free of any rights of persons against whom the lien was valid and free of any rights of a secured creditor, despite noncompliance by the owner with the requirements of this section.

(11) In the event of a sale under this section, the owner may satisfy the lien for the proceeds of the sale, subject to the rights of any prior lienholder; the lien rights of the prior lienholder are automatically transferred to the proceeds of the sale; if the sale is made in good faith and is conducted in a reasonable manner, the owner shall not be subject to any surcharge for a deficiency in the amount of a prior secured lien, but shall hold the balance, if any, for delivery to the occupant, lienholder, or other person in interest; if the occupant, lienholder, or other person in interest does not claim the balance of the proceeds within one year of the date of sale, it shall become the property of the Utah state treasurer as unclaimed property with no further claim against the owner.

(12) If the requirements of this chapter are not satisfied, if the sale of the personal property is not in conformity with the notice of sale, or if there is a willful violation of this chapter, nothing in this section affects the rights and liabilities of the owner, occupant, or any other person.

Amended by Chapter 163, 2013 General Session

38-8-3.5. Right to tow certain vehicles subject to lien.

(1) If the property subject to a lien described in Section 38-3-2 is a vehicle, the occupant is in default for a continuous 60-day period, and the owner chose not to sell the vehicle under Section 38-8-3, the owner may have the vehicle towed from the self-service storage facility by an independent towing carrier that is certified by the Department of Transportation as described in Section 72-9-602.

(2) Within one day after the day on which a vehicle is towed under Subsection (1), the owner shall send written notice by certified mail, postage prepaid, to the occupant's last known address that states:

(a) the date the vehicle was towed; and

(b) the address and telephone number of the person that towed the vehicle.

(3) An owner that has a vehicle towed under Subsection (1) is not liable for any damage that occurs to the vehicle after the independent towing carrier takes possession of the vehicle.

Amended by Chapter 189, 2014 General Session

38-8-4. Posting of notice.

Each owner acting under this chapter shall keep posted in a prominent place in

the owner's office at all times a notice that reads as follows:

"All articles stored under a rental agreement, for which charges have not been paid for 30 days, will be sold to pay charges. If this business does not sell a vehicle stored under a rental agreement, it will be towed from the self-storage facility after 60 days of nonpayment."

Amended by Chapter 163, 2013 General Session

38-8-5. Other liens unaffected.

Nothing in this section shall be construed as in any manner impairing or affecting the right of parties to create liens by special contract or agreement, nor shall it in any manner affect or impair other liens arising at common law or in equity, or by any statute of this state.

Enacted by Chapter 171, 1981 General Session

38-9-101. Title.

- (1) This chapter is known as the "Wrongful Lien Act."
- (2) This part is known as "General Provisions."

Enacted by Chapter 114, 2014 General Session

38-9-102. Definitions.

As used in this chapter:

- (1) "Affected person" means:
 - (a) a person who is a record interest holder of the real property that is the subject of a recorded nonconsensual common law document; or
 - (b) the person against whom a recorded nonconsensual common law document purports to reflect or establish a claim or obligation.
- (2) "Document sponsor" means a person who, personally or through a designee, signs or submits for recording a document that is, or is alleged to be, a nonconsensual common law document.
- (3) "Interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, title holder, mortgagee, trustee, or beneficial owner.
- (4) "Lien claimant" means a person claiming an interest in real property who offers a document for recording or filing with any county recorder in the state asserting a lien, or notice of interest, or other claim of interest in certain real property.
- (5) "Nonconsensual common law document" means a document that is submitted to a county recorder's office for recording against public official property that:
 - (a) purports to create a lien or encumbrance on or a notice of interest in the real property;
 - (b) at the time the document is recorded, is not:
 - (i) expressly authorized by this chapter or a state or federal statute;
 - (ii) authorized by or contained in an order or judgment of a court of competent jurisdiction; or

(iii) signed by or expressly authorized by a document signed by the owner of the real property; and

(c) is submitted in relation to the public official's status or capacity as a public official.

(6) "Owner" means a person who has a vested ownership interest in real property.

(7) "Political subdivision" means a county, city, town, school district, special improvement or taxing district, local district, special service district, or other governmental subdivision or public corporation.

(8) "Public official" means:

(a) a current or former:

(i) member of the Legislature;

(ii) member of Congress;

(iii) judge;

(iv) member of law enforcement;

(v) corrections officer;

(vi) active member of the Utah State Bar; or

(vii) member of the Board of Pardons and Parole;

(b) an individual currently or previously appointed or elected to an elected position in:

(i) the executive branch of state or federal government; or

(ii) a political subdivision;

(c) an individual currently or previously appointed to or employed in a position in a political subdivision, or state or federal government that:

(i) is a policymaking position; or

(ii) involves:

(A) purchasing or contracting decisions;

(B) drafting legislation or making rules;

(C) determining rates or fees; or

(D) making adjudicative decisions; or

(d) an immediate family member of a person described in Subsections (8)(a) through (c).

(9) "Public official property" means real property that has at least one record interest holder who is a public official.

(10) (a) "Record interest holder" means a person who holds or possesses a present, lawful property interest in real property, including an owner, titleholder, mortgagee, trustee, or beneficial owner, and whose name and interest in that real property appears in the county recorder's records for the county in which the property is located.

(b) "Record interest holder" includes any grantor in the chain of the title in real property.

(11) "Record owner" means an owner whose name and ownership interest in certain real property is recorded or filed in the county recorder's records for the county in which the property is located.

(12) "Wrongful lien" means any document that purports to create a lien, notice of interest, or encumbrance on an owner's interest in certain real property and at the

time it is recorded is not:

- (a) expressly authorized by this chapter or another state or federal statute;
- (b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or
- (c) signed by or authorized pursuant to a document signed by the owner of the real property.

Renumbered and Amended by Chapter 114, 2014 General Session

38-9-103. Scope.

- (1) This chapter does not apply to a notice of interest filed before May 5, 2008.
- (2) This chapter does not apply to a lis pendens recorded in accordance with Section 78B-6-1303 and does not prevent a person from seeking any other relief permitted by law.
- (3) This chapter does not apply to a person entitled to a preconstruction or construction lien under Section 38-1a-301 who files a lien pursuant to Title 38, Chapter 1a, Preconstruction and Construction Liens.

Renumbered and Amended by Chapter 114, 2014 General Session

38-9-201. Title.

This part is known as "Recording a Wrongful Lien."

Enacted by Chapter 114, 2014 General Session

38-9-202. County recorder may reject wrongful lien within scope of employment -- Good faith requirement.

- (1) (a) A county recorder may refuse to record a lien if the county recorder determines that the lien is a wrongful lien.
- (b) If the county recorder refuses to record a lien in accordance with Subsection (1)(a), the county recorder shall immediately return the original document together with a notice that the document was rejected pursuant to this section to the person attempting to record the document or to the address provided on the document.
- (2) A county recorder who, within the scope of the county recorder's employment, rejects or accepts a document for recording in good faith under this section is not liable for damages.
- (3) If a document that a county recorder refuses to record under this section is later found not to be a wrongful lien pursuant to a court order, it shall have no retroactive recording priority.
- (4) Nothing in this chapter precludes a person from pursuing any remedy pursuant to Utah Rules of Civil Procedure, Rule 65A, Injunctions.

Renumbered and Amended by Chapter 114, 2014 General Session

38-9-203. Civil liability for recording wrongful lien -- Damages.

- (1) A lien claimant who records or causes a wrongful lien to be recorded in the

office of the county recorder against real property is liable to a record interest holder for any actual damages proximately caused by the wrongful lien.

(2) If the person in violation of Subsection (1) refuses to release or correct the wrongful lien within 10 days from the date of written request from a record interest holder of the real property delivered personally or mailed to the last-known address of the lien claimant, the person is liable to that record interest holder for \$3,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs.

(3) A person is liable to the record owner of real property for \$10,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs, who records or causes to be recorded a wrongful lien in the office of the county recorder against the real property, knowing or having reason to know that the document:

- (a) is a wrongful lien;
- (b) is groundless; or
- (c) contains a material misstatement or false claim.

Renumbered and Amended by Chapter 114, 2014 General Session

**38-9-204. Petition to file lien -- Notice to record interest holders --
Summary relief -- Contested petition.**

(1) A lien claimant whose document is rejected pursuant to Section 38-9-202 may petition the district court for an expedited determination that the lien may be recorded.

(2) A petition under Subsection (1) shall:

- (a) be filed:
 - (i) with the district court in the county of the county recorder who refused to record the document; and
 - (ii) within 10 days after the day on which the person who files the petition receives the notice under Subsection 38-9-202(1)(b) of the county recorder's refusal to record the document;
- (b) state with specificity the grounds why the document should lawfully be recorded; and

(c) be supported by a sworn affidavit of the lien claimant.

(3) If the court finds the petition is insufficient, it may dismiss the petition without a hearing.

(4) (a) If the court grants a hearing, the petitioner shall, by certified or registered mail, serve a copy of the petition, notice of hearing, and a copy of the court's order granting an expedited hearing on all record interest holders of the property sufficiently in advance of the hearing to enable any record interest holder to attend the hearing.

(b) Any record interest holder of the property has the right to attend and contest the petition.

(5) (a) If, following a hearing, the court finds that the document may lawfully be recorded, the court shall issue an order directing the county recorder to accept the document for recording.

(b) If the petition is contested, the court may award costs and reasonable

attorney fees to the prevailing party.

(6) (a) A summary proceeding under this section:

(i) may only determine whether a contested document, on its face, shall be recorded by the county recorder; and

(ii) may not determine the truth of the content of the document or the property or legal rights of the parties beyond the necessary determination of whether the document shall be recorded.

(b) A court's grant or denial of a petition under this section may not restrict any other legal remedies of any party, including any right to injunctive relief pursuant to Rules of Civil Procedure, Rule 65A, Injunctions.

(7) If a petition under this section contains a claim for damages, the proceedings related to the claim for damages may not be expedited under this section.

Renumbered and Amended by Chapter 114, 2014 General Session

38-9-205. Petition to nullify lien -- Notice to lien claimant -- Summary relief -- Finding of wrongful lien -- Wrongful lien is void.

(1) A record interest holder of real property against which a wrongful lien is recorded may petition the district court in the county in which the document is recorded for summary relief to nullify the wrongful lien.

(2) The petition described in Subsection (1) shall state with specificity the claim that the lien is a wrongful lien and shall be supported by a sworn affidavit of the record interest holder.

(3) (a) If the court finds the petition insufficient, the court may dismiss the petition without a hearing.

(b) If the court finds the petition is sufficient, the court shall schedule a hearing within 10 days to determine whether the document is a wrongful lien.

(c) The record interest holder shall serve a copy of the petition on the lien claimant and a copy of a notice of the hearing pursuant to Rules of Civil Procedure, Rule 4, Process.

(d) The lien claimant is entitled to attend and contest the petition.

(4) A summary proceeding under this section:

(a) may only determine whether a document is a wrongful lien; and

(b) may not determine any other property or legal rights of the parties or restrict other legal remedies of any party.

(5) (a) If, following a hearing, the court determines that the recorded document is a wrongful lien, the court shall issue an order declaring the wrongful lien void ab initio, releasing the property from the lien, and awarding costs and reasonable attorney fees to the petitioner.

(b) (i) The record interest holder may submit a certified copy of the order to the county recorder for recording.

(ii) The order shall contain a legal description of the real property.

(c) If the court determines that the claim of lien is valid, the court shall dismiss the petition and may award costs and reasonable attorney's fees to the lien claimant. The dismissal order shall contain a legal description of the real property. The prevailing lien claimant may record a certified copy of the dismissal order.

(6) If the court determines that the recorded document is a wrongful lien, the wrongful lien is void ab initio and provides no notice of claim or interest.

(7) If a petition under this section contains a claim for damages, the proceedings related to the claim for damages may not be expedited under this section.

Renumbered and Amended by Chapter 114, 2014 General Session

38-9-301. Title.

This part is known as "Recording a Nonconsensual Common Law Document."

Enacted by Chapter 114, 2014 General Session

38-9-302. Recording a nonconsensual common law document -- Procedure.

(1) For a nonconsensual common law document recorded on or after May 13, 2014, within five business days after the day on which an individual submits a nonconsensual common law document to a county recorder for recording, the individual shall cause the sheriff to serve written notice of the recording of the nonconsensual common law document upon each affected person.

(2) A written notice described in Subsection (1) shall include:

- (a) the name, address, and telephone number of the document sponsor;
- (b) the date the nonconsensual common law document was recorded; and
- (c) a copy of the nonconsensual common law document.

(3) (a) No later than three business days after the day on which the sheriff serves the written notice described in Subsection (1), the sheriff shall submit proof of service to the county recorder for recording.

(b) The county recorder may not charge a fee for recording a proof of service under Subsection (3)(a).

Enacted by Chapter 114, 2014 General Session

38-9-303. Enforcement proceeding required.

(1) For a nonconsensual common law document recorded on or after May 13, 2014, within 10 business days after the day on which a document sponsor submits a nonconsensual common law document to the county recorder for recording, the document sponsor shall file a complaint in district court in the county of the county recorder where the nonconsensual common law document was recorded for a proceeding to obtain an order that the nonconsensual common law document is valid and enforceable.

(2) A complaint to initiate a judicial proceeding described in Subsection (1) shall:

- (a) state with specificity the grounds that make the nonconsensual common law document valid and enforceable;
- (b) be supported by the document sponsor's sworn affidavit; and
- (c) name each affected person as an opposing party.

(3) If the court finds that a complaint filed under Subsection (1) does not meet the requirements described in Subsection (2), the court may dismiss the complaint

without a hearing.

(4) If a complaint filed under Subsection (1) meets the requirements described in Subsection (2), the court:

(a) shall hold a hearing;

(b) following the hearing, shall issue an order that:

(i) states whether the nonconsensual common law document is valid and enforceable; and

(ii) includes a legal description of the real property that is the subject of the complaint; and

(c) may award costs and reasonable attorney fees to the prevailing party.

(5) Within three business days after the day on which the court issues a final order in a proceeding under this section, the prevailing party shall submit a copy of the court's final order to the county recorder for recording.

(6) A nonconsensual common law document is presumed invalid and unenforceable.

(7) A person's lack of belief in the jurisdiction or authority of the state or of the government of the United States is not a defense to liability under this section.

(8) A court's order in a proceeding under this section does not restrict any other legal remedies available to any party, including any right to injunctive relief under Rules of Civil Procedure, Rule 65A, Injunctions.

Enacted by Chapter 114, 2014 General Session

38-9-304. Civil liability -- Damages.

(1) If, under Section 38-9-303, a court finds that a recorded nonconsensual common law document is unenforceable, the document sponsor of the nonconsensual common law document is liable to each affected person for any actual damages proximately caused by recording the nonconsensual common law document, costs, and reasonable attorney fees.

(2) A person who is liable under Subsection (1) for a nonconsensual common law document is jointly and severally liable with each other person who is liable for the nonconsensual common law document.

Enacted by Chapter 114, 2014 General Session

38-9-305. Failure to comply -- Nonconsensual common law document void.

A recorded nonconsensual common law document that is recorded on or after May 13, 2014, is void and has no legal effect if the document sponsor does not:

(1) comply with the notice requirements described in Section 38-9-302;

(2) comply with the judicial enforcement requirements described in Section 38-9-303; and

(3) prevail in a judicial enforcement proceeding under Section 38-9-303.

Enacted by Chapter 114, 2014 General Session

38-9a-101. Title.

This chapter is known as "Wrongful Lien Injunctions."

Enacted by Chapter 93, 2005 General Session

38-9a-102. Definitions.

As used in this chapter, "wrongful lien" refers to a lien made in violation of Section 76-6-503.5, and includes:

- (1) a wrongful lien as defined in Section 38-9-102; and
- (2) a nonconsensual common law document as defined in Section 38-9-102.

Amended by Chapter 114, 2014 General Session

38-9a-201. Wrongful lien injunction -- Forms.

(1) (a) Any person who believes that he or she is the victim of a wrongful lien may file a verified written petition for a civil wrongful lien injunction against the person filing, making, or uttering the lien, notice of interest, or other encumbrance in the district court in the district in which the petitioner or respondent resides or in which any of the events occurred.

(b) A minor accompanied by his or her parent or guardian may file a petition on his or her own behalf, or a parent, guardian, or custodian may file a petition on the minor's behalf.

(2) (a) (i) The Administrative Office of the Courts shall develop and adopt forms for petitions, ex parte civil wrongful lien injunctions, civil wrongful lien injunctions, service, and any other necessary forms in accordance with the provisions of this chapter on or before May 2, 2005.

(ii) The office shall provide the forms adopted under Subsection (2)(a)(i) to the clerk of each district court.

(b) The court clerks shall provide the forms to persons seeking to proceed under this chapter.

(c) The district courts shall issue all petitions, injunctions, ex parte injunctions, and any other necessary forms in the form prescribed by the Administrative Office of the Courts.

Amended by Chapter 223, 2008 General Session

38-9a-202. Petition for wrongful lien injunction -- Ex parte injunction.

(1) The petition for a civil wrongful lien injunction shall include:

(a) the name of the petitioner, except that at the petitioner's request his or her address shall be disclosed to the court for purposes of service, but may not be listed on the petition, and shall be maintained in a separate document or automated database, not subject to release, disclosure, or any form of public access except as ordered by the court for good cause shown;

(b) the name and address, if known, of the respondent;

(c) specific actions and dates of the actions constituting the alleged wrongful lien;

(d) if there is a prior court order concerning the same conduct, the name of the court in which the order was rendered; and

(e) corroborating evidence of a wrongful lien, which may be in the form of a police report, affidavit, record, statement, item, letter, copy of the lien, or any other evidence which tends to prove the allegation of wrongful lien.

(2) If the court determines there is reason to believe that a wrongful lien has been made, uttered, recorded, or filed, the court may issue an ex parte civil wrongful lien injunction that includes any of the following:

(a) enjoining the respondent from making, uttering, recording, or filing any further liens without specific permission of the court;

(b) ordering that the lien be nullified; and

(c) any other relief necessary or convenient for the protection of the petitioner and other specifically designated persons under the circumstances.

(3) An ex parte civil wrongful lien injunction issued under this section shall state on its face:

(a) that the respondent is entitled to a hearing, upon written request filed with the court within 10 days of the service of the injunction;

(b) the name and address of the district court where the request may be filed;

(c) that if the respondent fails to request a hearing within 10 days of service, the ex parte civil wrongful lien injunction is automatically modified to a civil wrongful lien injunction without further notice to the respondent and that the civil wrongful lien injunction expires three years after service on the respondent;

(d) the following statement: "Attention. This is an official court order. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of making a wrongful lien and any other crime you may have committed in disobeying this order."; and

(e) that if the respondent requests, in writing, a hearing after the ten-day period specified in Subsection (3)(a) the court shall set a hearing within a reasonable time from the date the hearing is requested.

(4) The ex parte civil wrongful lien injunction shall be served on the respondent within 90 days after the date it is signed, and is effective upon service.

Enacted by Chapter 93, 2005 General Session

38-9a-203. Hearing -- Court action.

(1) (a) A hearing requested by the respondent as allowed under Section 38-9a-202 shall be held within 10 days from the date the request is filed with the court, except as provided under Subsection (3).

(b) If the court finds compelling reasons to continue the hearing date, the hearing shall then be held at the earliest possible time.

(2) At the hearing the court may modify, revoke, or continue the injunction. The burden is on the petitioner to show by a preponderance of the evidence that the respondent has made, uttered, recorded, or filed a wrongful lien against the petitioner or the petitioner's property.

(3) (a) If the respondent requests a hearing subsequent to the ten-day period after service, the court shall set a hearing within a reasonable time from the date

requested.

(b) At the hearing, the burden is on the respondent to show good cause why the civil wrongful lien injunction should be nullified.

Enacted by Chapter 93, 2005 General Session

38-9a-204. Civil wrongful lien injunction -- Validity of injunctions -- Changes to injunctions -- Dissolution of injunction.

(1) If the respondent does not request a hearing in writing within 10 days of service of the ex parte civil wrongful lien injunction under Section 38-9a-203, the injunction automatically becomes a civil wrongful lien injunction without further notice to the respondent and expires three years from the date of service.

(2) The civil wrongful lien injunction issued by the court shall include the following statement: "Attention. This is an official court order. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of making a wrongful lien and any other crime you may have committed in disobeying this order."

(3) A certified copy of an ex parte civil wrongful lien injunction or civil wrongful lien injunction is presumed to be a valid existing order of the court for a period of three years from the date of service of the ex parte civil wrongful lien injunction on the respondent.

(4) (a) Any changes or modifications of the ex parte civil wrongful lien injunction are effective upon service on the respondent. The original ex parte civil wrongful lien injunction continues in effect until service of the changed or modified civil wrongful lien injunction on the respondent.

(b) The validity of the injunction under this Subsection (4) is determined in the same manner as prescribed in Subsection (3).

(5) The ex parte civil wrongful lien injunction or civil wrongful lien injunction may be dissolved at any time upon written application by the petitioner to the issuing court.

(6) (a) The court clerk shall provide, without charge, to the petitioner one certified copy of the injunction issued by the court and one certified copy of the proof of service of the injunction on the respondent.

(b) Charges may be imposed by the clerk's office for any additional copies, whether or not certified, under the Utah Code of Judicial Administration, Rule 4-202.08.

Enacted by Chapter 93, 2005 General Session

38-9a-205. Remedies -- Actions arising from injunctions -- Attorney fees.

(1) The remedies provided in this chapter for enforcement of the orders of the court are in addition to any other civil and criminal remedies available.

(2) The district court shall hear and decide all matters arising pursuant to this chapter.

(3) After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney's fees.

Enacted by Chapter 93, 2005 General Session

38-10-101. Definitions.

As used in this chapter:

(1) "Contractor" means any person who, under contract with the owner or an operator designated by an owner, performs work upon or furnishes materials or equipment for any production unit.

(2) "Lien claimant" means contractors and subcontractors who claim a lien under this chapter.

(3) "Mine" means a mining claim, mineral deposit, ore deposit, quarry, or mining lease and any related shaft, tunnel, incline, drift, or excavation.

(4) "Owner" means a person holding any operating right, working interest, or interest in the legal or equitable title, to any real property, mine, oil lease, gas lease, well, or any combination of these, unless otherwise provided in this chapter.

(5) "Production unit" means:

(a) the drilling unit for a well established by lawful order or rule of the Board of Oil, Gas, and Mining in which the well is located; or if not applicable, 40 acres comprising the quarter-quarter section, or equivalent legal subdivision, in which the well is located; or

(b) a mine, and if work is performed upon or materials or equipment furnished to any part of the mine from which two or more mines are worked, the production unit shall extend to the owner's interest in the mines so worked.

(6) "Subcontractor" means any person, other than the contractor, who, under contract with a contractor or another subcontractor, performs work upon or furnishes materials or equipment for any production unit.

Amended by Chapter 203, 1990 General Session

38-10-102. Those entitled to lien -- What may be attached -- Qualifying work, materials, equipment, and costs -- Liability of nonoperating owners.

(1) Contractors and subcontractors shall have a lien upon the interest of the owner in:

(a) the production unit and access rights appurtenant thereto;

(b) pipelines, including rights of way, buildings, wells, oil tanks, and appurtenances located on the land or leasehold within the production unit; and

(c) the ore, minerals, oil, gas, or associated substances in the ground, or while the same remain in storage on the production unit, which are attributable to the interest subject to the lien as the interest existed on the date work was first performed or materials or equipment were first furnished.

(2) The lien upon the interest of the owner in property described in Subsections (1)(a) through (c) shall be for the value of the work performed or materials or equipment furnished for:

(a) open pit work, field processing, construction, alteration, digging, drilling, driving, boring, operating, perforating, fracturing, testing, logging, acidizing, cementing, completion, repair, maintenance, prospecting, sampling, exploration, development, preservation, performing geophysical, geochemical, location, or assessment work, or related activities;

(b) work performed or materials or equipment furnished in accordance with a

pooling order, or pursuant to an operating agreement, or other agreement governing joint mining, or oil, and gas operations;

(c) title services, designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys, permitting, or regulatory compliance;

(d) foreclosure costs including publication, costs of sale, sheriff's fees, attorney's fees, and other costs of collection; and

(e) transportation and related mileage charges, for any work performed or materials or equipment furnished pursuant to Subsections (2)(a) through (d).

(3) For purposes of this section, the operator under a joint operating agreement, unit operating agreement, or other agreement granting one owner control of operations on the production unit shall not be considered to be the agent or contractor of the nonconsenting, nonoperating owners. The operator shall, however, have the lien granted under Subsection (1) upon the interest of all nonoperating owners for work performed, or materials or equipment furnished by the operator; and the nonoperating owners shall have the lien granted under Subsection (1) upon the interest of the operator for work performed, or materials or equipment furnished by third persons to the extent the nonoperating owners have paid or advanced funds to the operator for such work, materials, or equipment.

Amended by Chapter 203, 1990 General Session

38-10-102.1. Perfection of lien -- Notice of subcontractor's claim -- Information required to be provided -- Payments to be held in trust.

(1) (a) To perfect a lien a subcontractor must comply with the requirements of this section and Section 38-10-105.

(b) This section shall apply only to a subcontractor's claim or a portion of a claim for amounts more than \$5,000, for work performed upon or materials or equipment furnished for each production unit.

(2) A subcontractor shall provide notice of a subcontractor's claim to the owner and operator designated by the owner within 20 days after the commencement of work or the furnishing of materials or equipment.

(3) The notice shall:

(a) be delivered, or mailed by certified mail, return receipt requested, to the:

(i) owner; and

(ii) operator designated by the owner;

(b) be considered delivered when deposited in the mail; and

(c) contain a statement setting forth the following information:

(i) identification of the lien claimant by full name, address, and telephone number;

(ii) the name of the person by whom he was employed or to whom he furnished material or equipment; and

(iii) a description of the property comprising the production unit.

(4) Failure to deliver or mail the notice shall discharge and satisfy the lien attaching to the interest of the owner to the extent the owner pays a contractor or operator his share of all, or part, of the lien claimant's agreed contract price.

(5) (a) Any contractor or subcontractor shall provide, in writing, to each person

with whom he contracts:

- (i) the full name and address of the:
 - (A) owner of the production unit; and
 - (B) the operator designated by the owner; and
- (ii) a description of the property comprising the production unit.

(b) Failure to provide the information required under this section within three days after the work is commenced or the materials and equipment are furnished shall entitle the claimant to an award of costs and attorneys' fees in an action against the person to enforce the contract.

(6) Any contractor, operator, or subcontractor who receives payment for work performed upon, or material or equipment furnished for any production unit, shall hold all payments in trust for the person with whom he contracts for work upon, or the furnishing of materials or equipment for the production unit, for any amount remaining unpaid under the contract.

Enacted by Chapter 203, 1990 General Session

38-10-103. Nonimpairment of lien attached to estate less than fee or to equitable or legal contingent interest.

If a lien attaches to an interest in land:

(1) which is less than the fee interest, including the interest of an optionee or farmouttee, termination of the interest in the land does not impair any lien which attaches prior to termination as to the owner's continuing interest, if any, in appurtenances and fixtures previously located on the land; or

(2) which interest is contingent upon the happening of a condition subsequent, failure of the interest to ripen into legal title, or failure of the occurrence of the condition subsequent does not impair any lien as to the owner's continuing interest, if any, in appurtenances and fixtures located on the land to which the lien attached prior to the failure.

Enacted by Chapter 170, 1987 General Session

38-10-104. Limitation of interests covered by lien.

(1) If work is performed or materials or equipment are furnished to the owner of less than a fee interest, the lien granted by this chapter does not extend to the underlying fee interest, royalty interest, overriding royalty, net profits interest, production payment, or other nonpossessory interest, unless expressly provided for by contract with the owner of the nonpossessory interest.

(2) If work is performed for or materials or equipment furnished to an owner or part owner of only a portion of the acreage within the production unit, the lien granted by this chapter is limited to that portion of acreage.

Enacted by Chapter 170, 1987 General Session

38-10-105. Notice of lien -- Recording -- Service on owner of interest -- Failure to serve notice -- Time of filing.

(1) To perfect the lien provided by this chapter, a notice of lien as required by Subsection 38-1a-502(2) shall be filed with the county recorder in any county where any part of the land to which the lien may attach is situated. The notice of lien shall be filed within 180 days after the last day work was performed or materials or equipment were furnished by the lien claimant, except as provided in Subsection (3).

(2) Within 30 days after filing the notice of lien, the lien claimant shall deliver or mail a copy of the notice by certified mail, return receipt requested, to the owner of the interest lien. If the owner's current address is not readily available, a copy of the notice may be mailed to the last-known address of the owner, as shown by the records of the county recorder in any county where the land is situated. Failure to deliver or mail the notice of lien to the owner shall not cause the lien to be void but precludes the lien claimant from an award of costs and attorney fees against the owner in an action to enforce the lien.

(3) The notice of lien by a nonoperating owner pursuant to Subsection 38-10-102(3) shall be filed within 60 days after receipt by such owner of a notice of lien claim filed by a lien claimant with respect to work performed or materials or equipment furnished by the lien claimant for which such owner has paid or advanced funds to a contractor or operator.

Amended by Chapter 278, 2012 General Session

38-10-106. Enforcement -- Time for -- Lis pendens -- Action for debt not affected -- Execution on an interest.

(1) Actions to enforce the liens created by this chapter shall be commenced within 180 days after the filing of the notice of lien required by Section 38-10-105. The lien claimant shall, within 10 working days after commencement of the action, file a notice of the pendency of the action with the county recorder of each county in which the lien is recorded or the lien shall be void, except as to persons who have been served and made parties to the action. Nothing in this chapter shall be construed to impair or affect the right of any person to whom a debt may be due for any work performed or materials or equipment furnished to maintain an action to recover the debt.

(2) In any action to enforce a lien under this chapter, the provisions of Sections 38-1a-702 and 38-1a-705 apply.

(3) Upon the entry of a judgment foreclosing the lien, execution on an interest shall be governed as follows:

- (a) upon real property by Section 38-1a-704; and
- (b) upon personalty by the Utah Rules of Civil Procedure.

Amended by Chapter 278, 2012 General Session

38-10-107. Lien priority -- Proration of proceeds upon sale.

(1) Except as provided in this section, liens under this chapter shall be equal in priority without reference to the date of the filing of the lien.

(2) Any lien perfected as provided by this chapter attaches to the interest covered by Section 38-10-102 in preference to any subsequent lien, security interest, or

mortgage perfected upon an interest in real or personal property against which the lien is claimed.

(3) The liens provided for in this chapter shall relate back to, and take effect as of the time of the commencement of work or the furnishing of materials or equipment which are conspicuously visible on the production unit, or as of the filing of the notice of lien, whichever first occurs.

(4) If a sale is ordered by the court upon foreclosure of any lien provided by this chapter and the proceeds from the sale are insufficient to discharge in full all of the liens, the proceeds shall be prorated among the several lien claimants who have joined in the foreclosure according to the amounts of their respective judgments.

Enacted by Chapter 170, 1987 General Session

38-10-108. Limitation upon owner's liability.

Except as provided in Section 38-10-102 and Section 38-10-114, nothing in this chapter shall be construed to fix a greater liability against the owner than the price or sum agreed by the owner to be paid for his share of the work performed or the materials or equipment furnished.

Enacted by Chapter 170, 1987 General Session

38-10-109. Limitation on liability for other owners in production unit if notice provided -- Contents of notice -- Filing of notice -- Time for filing -- Failure to file does not affect other defenses.

(1) Where work is performed or materials or equipment are furnished for any production unit under a contract with an owner of an interest in the production unit, any interest of any other owner in the production unit shall not be subject to a lien under this chapter, if such other owner gives written notice that he will not be responsible for work performed or materials or equipment provided.

(2) Written notice shall be:

(a) in recordable form;

(b) filed with the county recorder of the county where the production unit is located; and

(c) filed within 10 working days after the latter of:

(i) the owner obtaining knowledge of the performance of such work or the providing of such materials or equipment; or

(ii) the execution by the last party of:

(A) a farmout agreement;

(B) a lease or sublease;

(C) an operating agreement;

(D) an assignment of less than 100% of the lessee's interest or operating rights under a lease;

(E) a sales contract; or

(F) an option agreement.

(3) Failure to file under this section shall not impair any other defense available to such owner.

Enacted by Chapter 170, 1987 General Session

38-10-110. Cancellation of lien.

Cancellation of the liens provided for in this chapter shall be in accordance with the provisions of Section 38-1a-803.

Amended by Chapter 278, 2012 General Session

38-10-111. Abuse of lien right -- Penalty.

An abuse of the lien rights provided for in this chapter is governed by Section 38-1a-308.

Amended by Chapter 278, 2012 General Session

38-10-112. Assignment of lien.

An assignment of the liens provided for in this chapter is governed by Section 38-1a-801.

Amended by Chapter 278, 2012 General Session

38-10-113. Satisfaction of lien upon filing corporate surety bond or letter of credit -- Payment to lien claimant upon entry of judgment -- Filing -- Commencement time for action upon bond or undertaking.

(1) Any lien created under this chapter is satisfied and shall be cancelled upon the owner filing in recordable form, a corporate surety bond or letter of credit in an amount equal to 1-1/2 times the amount of the lien with the county recorder in any county where the notice of lien was filed.

(2) The bond or letter of credit shall guarantee that upon entry of final judgment in favor of the lien claimant, the principal or its sureties shall pay the lien claimant the lesser of the judgment or the full amount of the bond or letter of credit.

(3) The bond or undertaking may be filed any time prior to a final judgment in an action to foreclose the lien.

(4) A certified copy of the bond or undertaking shall also be filed with the clerk of the district court in the county in which an action to foreclose the lien is filed or pending.

(5) Upon the filing of the bond or letter of credit with the county recorder, the lien against the owner's interest shall be satisfied, and the security described in Subsection (1) shall be substituted.

(6) A lien claimant whose lien has been satisfied by the substitution of the security described in Subsection (1) may bring an action upon the bond or undertaking. The action shall be commenced within the time prescribed in Subsection 38-10-106(1).

Enacted by Chapter 170, 1987 General Session

38-10-114. Attorney fees.

An award of attorney fees in an action to enforce any lien in this chapter is

governed by Section 38-1a-707.

Amended by Chapter 278, 2012 General Session

38-10-115. Prohibition against removal of property covered by lien -- Penalty.

Any person who removes or causes to be removed any property covered by a validly perfected lien created by this chapter without the written consent of the lien claimant and with the intent to defraud the lien claimant is guilty of a class A misdemeanor.

Amended by Chapter 241, 1991 General Session

38-11-101. Title.

This chapter is known as the "Residence Lien Restriction and Lien Recovery Fund Act."

Enacted by Chapter 308, 1994 General Session

38-11-102. Definitions.

(1) "Board" means the Residence Lien Recovery Fund Advisory Board established under Section 38-11-104.

(2) "Certificate of compliance" means an order issued by the director to the owner finding that the owner is in compliance with the requirements of Subsections 38-11-204(4)(a) and (4)(b) and is entitled to protection under Section 38-11-107.

(3) "Construction on an owner-occupied residence" means designing, engineering, constructing, altering, remodeling, improving, repairing, or maintaining a new or existing residence.

(4) "Department" means the Department of Commerce.

(5) "Director" means the director of the Division of Occupational and Professional Licensing.

(6) "Division" means the Division of Occupational and Professional Licensing.

(7) "Duplex" means a single building having two separate living units.

(8) "Encumbered fund balance" means the aggregate amount of outstanding claims against the fund. The remainder of the money in the fund is unencumbered funds.

(9) "Executive director" means the executive director of the Department of Commerce.

(10) "Factory built housing" is as defined in Section 15A-1-302.

(11) "Factory built housing retailer" means a person that sells factory built housing to consumers.

(12) "Fund" means the Residence Lien Recovery Fund established under Section 38-11-201.

(13) "Laborer" means a person who provides services at the site of the construction on an owner-occupied residence as an employee of an original contractor or other qualified beneficiary performing qualified services on the residence.

(14) "Licensee" means any holder of a license issued under Title 58, Chapter 3a, Architects Licensing Act; Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act; Chapter 53, Landscape Architects Licensing Act; and Chapter 55, Utah Construction Trades Licensing Act.

(15) "Nonpaying party" means the original contractor, subcontractor, or real estate developer who has failed to pay the qualified beneficiary making a claim against the fund.

(16) "Original contractor" means a person who contracts with the owner of real property or the owner's agent to provide services, labor, or material for the construction of an owner-occupied residence.

(17) "Owner" means a person who:

(a) contracts with a person who is licensed as a contractor or is exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an owner-occupied residence upon real property that the person:

(i) owns; or

(ii) purchases after the person enters into a contract described in this Subsection (17)(a) and before completion of the owner-occupied residence;

(b) contracts with a real estate developer to buy a residence upon completion of the construction on the owner-occupied residence; or

(c) purchases a residence from a real estate developer after completion of the construction on the owner-occupied residence.

(18) "Owner-occupied residence" means a residence that is, or after completion of the construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a primary or secondary residence within 180 days after the day on which the construction on the residence is complete.

(19) "Qualified beneficiary" means a person who:

(a) provides qualified services;

(b) pays necessary fees or assessments required under this chapter; and

(c) registers with the division:

(i) as a licensed contractor under Subsection 38-11-301(1) or (2), if that person seeks recovery from the fund as a licensed contractor; or

(ii) as a person providing qualified services other than as a licensed contractor under Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as a licensed contractor.

(20) (a) "Qualified services" means the following performed in construction on an owner-occupied residence:

(i) contractor services provided by a contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(ii) architectural services provided by an architect licensed under Title 58, Chapter 3a, Architects Licensing Act;

(iii) engineering and land surveying services provided by a professional engineer or land surveyor licensed or exempt from licensure under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(iv) landscape architectural services by a landscape architect licensed or exempt from licensure under Title 58, Chapter 53, Landscape Architects Licensing Act;

(v) design and specification services of mechanical or other systems;

- (vi) other services related to the design, drawing, surveying, specification, cost estimation, or other like professional services;
- (vii) providing materials, supplies, components, or similar products;
- (viii) renting equipment or materials;
- (ix) labor at the site of the construction on the owner-occupied residence; and
- (x) site preparation, set up, and installation of factory built housing.

(b) "Qualified services" does not include the construction of factory built housing in the factory.

(21) "Real estate developer" means a person having an ownership interest in real property who:

(a) contracts with a person who is licensed as a contractor or is exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction of a residence that is offered for sale to the public; or

(b) is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades Licensing Act, who engages in the construction of a residence that is offered for sale to the public.

(22) (a) "Residence" means an improvement to real property used or occupied, to be used or occupied as, or in conjunction with:

(i) a primary or secondary detached single-family dwelling; or

(ii) a multifamily dwelling up to and including duplexes.

(b) "Residence" includes factory built housing.

(23) "Subsequent owner" means a person who purchases a residence from an owner within 180 days after the day on which the construction on the residence is completed.

Amended by Chapter 108, 2014 General Session

38-11-103. Administration.

This chapter shall be administered by the Division of Occupational and Professional Licensing pursuant to the provisions of this chapter and consistent with Title 58, Chapter 1.

Amended by Chapter 172, 1995 General Session

38-11-104. Board.

(1) There is created the Residence Lien Recovery Fund Advisory Board consisting of:

(a) three individuals licensed as a contractor who are actively engaged in construction on owner-occupied residences;

(b) three individuals who are employed in responsible management positions with major suppliers of materials or equipment used in the construction on owner-occupied residences; and

(c) one member from the general public who has no interest in the construction on owner-occupied residences, or supply of materials used in the construction on owner-occupied residences.

(2) The board shall be appointed and members shall serve their respective

terms in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be to:

(a) advise the division with respect to informal adjudication of any claim for payment from the fund and any request for a certificate of compliance received by the division;

(b) act as the presiding officer, as defined by rule, in formal adjudicative proceedings held before the division with respect to any claim made for payment from the fund;

(c) advise the division with respect to:

(i) the general operation of the fund;

(ii) the amount and frequency of any assessment under this chapter;

(iii) the amount of any fees required under this chapter;

(iv) the availability and advisability of using funds for purchase of surety bonds to guarantee payment to qualified beneficiaries; and

(v) the limitation on the fund balance under Section 38-11-206; and

(d) review the administrative expenditures made by the division pursuant to Subsection 38-11-201(4) and report its findings regarding those expenditures to the executive director on or before the first Monday of December of each year.

(4) The attorney general shall render legal assistance as requested by the board.

Amended by Chapter 42, 2004 General Session

38-11-105. Procedures established by rule.

In compliance with Title 63G, Chapter 4, Administrative Procedures Act, the division shall establish procedures by rule by which claims for compensation from the fund and requests for certificates of compliance shall be adjudicated and by which assessments shall be collected.

Amended by Chapter 382, 2008 General Session

38-11-106. State not liable.

The state and the state's agencies, instrumentalities, and political subdivisions are not liable for:

(1) issuance or denial of any certificate of compliance;

(2) any claims made against the fund; or

(3) failure of the fund to pay any amounts ordered by the director to be paid from the fund.

Amended by Chapter 42, 2004 General Session

38-11-107. Restrictions upon maintaining a lien against residence or owner's interest in the residence.

(1) (a) A person qualified to file a lien upon an owner-occupied residence and the real property associated with that residence under Chapter 1a, Preconstruction and Construction Liens, who provides qualified services under an agreement, other than

directly with the owner, is barred from maintaining a lien upon that residence and real property or recovering a judgment in any civil action against the owner or the owner-occupied residence to recover money owed for qualified services provided by that person if:

(i) an owner meets the conditions described in Subsections 38-11-204(4)(a) and (b); or

(ii) (A) a subsequent owner purchases a residence from an owner;

(B) the subsequent owner who purchased the residence under Subsection (1)(a)(ii)(A) occupies the residence as a primary or secondary residence within 180 days from the date of transfer or the residence is occupied by the subsequent owner's tenant or lessee as a primary or secondary residence within 180 days from the date of transfer; and

(C) the owner from whom the subsequent owner purchased the residence met the conditions described in Subsections 38-11-204(4)(a) and (b).

(b) (i) As used in this Subsection (1)(b):

(A) "Contract residence":

(I) means the owner-occupied residence for which a subcontractor provides service, labor, or materials; and

(II) includes the real property associated with that owner-occupied residence.

(B) "General contract" means an oral or written contract between an owner and an original contractor for providing service, labor, or materials for construction on an owner-occupied residence.

(C) "Subcontractor" means a person who provides service, labor, or materials for construction on an owner-occupied residence under an agreement other than directly with the owner.

(ii) A subcontractor qualified to file a lien upon a contract residence under Chapter 1a, Preconstruction and Construction Liens, is barred from maintaining a lien upon that contract residence or from recovering a judgment in a civil action against the owner, the contract residence, or, as provided in Subsection (1)(b)(iii), a subsequent owner to recover for service, labor, or materials provided by the subcontractor:

(A) if the amount of the general contract under which the subcontractor provides service, labor, or materials totals no more than \$5,000; and

(B) whether or not the original contractor is licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

(iii) A subsequent owner is protected under Subsection (1)(b)(ii) to the same extent as an owner if:

(A) the subsequent owner purchases the contract residence from the owner; and

(B) (I) the subsequent owner occupies the residence as a primary or secondary residence within 180 days after the date of transfer; or

(II) the subsequent owner's tenant or lessee occupies the residence as a primary or secondary residence within 180 days after the date of the transfer.

(2) If a residence is constructed under conditions that do not meet all of the provisions of Subsection (1)(a) or (b), that residence and the real property associated with that residence as provided in Section 38-1a-302 is subject to any lien as provided in Section 38-1a-301.

(3) A lien claimant who files a preconstruction or construction lien under Chapter 1a, Preconstruction and Construction Liens, or a foreclosure action upon an owner-occupied residence is not liable for costs and attorney fees under Sections 38-1a-706 and 38-1a-707 or for any damages arising from a civil action related to the lien filing or foreclosure action if the lien claimant removes the lien within 15 days from the date the owner obtains a certificate of compliance and mails a copy of the certificate of compliance by certified mail to the lien claimant at the address provided for by Subsection 38-1a-502(2)(e). The 15-day period begins accruing from the date postmarked on the certificate of compliance sent to the lien claimant.

Amended by Chapter 278, 2012 General Session

38-11-108. Notification of rights under chapter.

(1) Beginning July 1, 1995, the original contractor or real estate developer shall state in the written contract with the owner what actions are necessary for the owner to be protected under Section 38-11-107 from the maintaining of a mechanic's lien or other civil action against the owner or the owner-occupied residence to recover money owed for qualified services.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may issue rules providing for the form and content of the information required by Subsection (1).

Amended by Chapter 382, 2008 General Session

38-11-109. Severability clause.

If any provision of this chapter is held invalid or unconstitutional by a court of competent jurisdiction, the invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid or unconstitutional provision.

Enacted by Chapter 193, 1999 General Session

38-11-110. Issuance of certificates of compliance.

(1) (a) The director may issue a certificate of compliance only after determining through an informal proceeding, as set forth in Title 63G, Chapter 4, Administrative Procedures Act:

(i) that the owner is in compliance with Subsections 38-11-204(4)(a) and (b); or
(ii) subject to Subsection (2), that the owner is entitled to protection under Subsection 38-11-107(1)(b).

(b) If the director determines through an informal proceeding under Subsection (1)(a) that an owner seeking the issuance of a certificate of compliance under Subsection (1)(a)(i) is not in compliance as provided in Subsection (1)(a)(i), the director may not issue a certificate of compliance.

(2) (a) An owner seeking the issuance of a certificate of compliance under Subsection (1)(a)(ii) shall submit an affidavit, as defined by the division by rule, affirming that the owner is entitled to protection under Subsection 38-11-107(1)(b).

(b) If an owner's affidavit under Subsection (2)(a) is disputed, the owner may file

a complaint in small claims court or district court to resolve the dispute.

(c) The director may issue a certificate of compliance to an owner seeking issuance of a certificate under Subsection (1)(a)(ii) if:

- (i) the owner's affidavit under Subsection (2)(a) is undisputed; or
- (ii) a small claims court or district court resolves any dispute over the owner's affidavit in favor of the owner.

Amended by Chapter 31, 2010 General Session

38-11-201. Residence Lien Recovery Fund.

(1) There is created an expendable special revenue fund called the "Residence Lien Recovery Fund."

(2) (a) The fund consists of all amounts collected by the division in accordance with Section 38-11-202.

(b) (i) The division shall deposit the funds in an account with the state treasurer.

(ii) The division shall record the funds in the Residence Lien Recovery Fund.

(c) The fund shall earn interest.

(3) The division shall employ personnel and resources necessary to administer the fund and shall use fund money in accordance with Sections 38-11-203 and 38-11-204 and to pay the costs charged to the fund by the attorney general.

(4) Costs incurred by the division for administering the fund shall be paid out of fund money.

(5) The Division of Finance shall report annually to the Legislature, the division, and the board. The report shall state:

(a) amounts received by the fund;

(b) disbursements from the fund;

(c) interest earned and credited to the fund; and

(d) the fund balance.

(6) (a) For purposes of establishing and assessing fees under Section 63J-1-504, the provisions of this chapter are considered a new program for fiscal year 1995-96.

(b) The department shall submit its fee schedule to the Legislature for its approval at the 1996 Annual General Session.

Amended by Chapter 400, 2013 General Session

38-11-202. Payments to the fund.

The Residence Lien Recovery Fund shall be supported solely from:

(1) initial and special assessments collected by the division from licensed contractors registered as qualified beneficiaries in accordance with Subsections 38-11-301(1) and (2) and Section 38-11-206;

(2) initial and special assessments collected by the division from other qualified beneficiaries registering with the division in accordance with Subsection 38-11-301(3) and Section 38-11-206;

(3) fees determined by the division under Section 63J-1-504 collected from laborers under Subsection 38-11-204(7) when the laborers obtain a recovery from the

fund;

(4) amounts collected by subrogation under Section 38-11-205 on behalf of the fund following a payment from the fund;

(5) application fees determined by the division under Section 63J-1-504 collected from:

(a) qualified beneficiaries or laborers under Subsection 38-11-204(1)(b) when qualified beneficiaries or laborers make a claim against the fund; or

(b) owners or agents of the owners seeking to obtain a certificate of compliance for the owner;

(6) registration fees determined by the division under Section 63J-1-504 collected from other qualified beneficiaries registering with the department in accordance with Subsection 38-11-301(3)(a)(iii);

(7) reinstatement fees determined by the division under Section 63J-1-504 collected from registrants in accordance with Subsection 38-11-302(5)(b);

(8) civil fines authorized under Subsection 38-11-205(2) collected by the attorney general for failure to reimburse the fund; and

(9) any interest earned by the fund.

Amended by Chapter 183, 2009 General Session

38-11-203. Disbursements from the fund -- Limitations.

(1) A payment of any claim upon the fund by a qualified beneficiary shall be made only upon an order issued by the director finding that:

(a) the claimant was a qualified beneficiary during the construction on a residence;

(b) the claimant complied with the requirements of Section 38-11-204; and

(c) there is adequate money in the fund to pay the amount ordered.

(2) A payment of a claim upon the fund by a laborer shall be made only upon an order issued by the director finding that:

(a) the laborer complied with the requirements of Subsection 38-11-204(7); and

(b) there is adequate money in the fund to pay the amount ordered.

(3) (a) An order under this section may be issued only after the division has complied with the procedures established by rule under Section 38-11-105.

(b) The director shall order payment of the qualified services as established by evidence, or if the claimant has obtained a judgment, then in the amount awarded for qualified services in the judgment to the extent the qualified services are attributable to the owner-occupied residence at issue in the claim.

(c) The director shall order payment of interest on amounts claimed for qualified services based on the current prime interest rate at the time payment was due to the date the claim is approved for payment except for delays attributable to the claimant but not more than 10% per annum.

(d) The rate shall be the Prime Lending Rate as published in the Wall Street Journal on the first business day of each calendar year adjusted annually.

(e) The director shall order payment of costs in the amount stated in the judgment. If the judgment does not state a sum certain for costs, or if no judgment has been obtained, the director shall order payment of reasonable costs as supported by

evidence. The claim application fee as established by the division pursuant to Subsection 38-11-204(1)(b) is not a reimbursable cost.

(f) If a judgment has been obtained with attorneys' fees, notwithstanding the amount stated in a judgment, or if no judgment has been obtained but the contract provides for attorneys' fees, the director shall order payment of attorneys' fees not to exceed 15% of qualified services. If the judgment does not state a sum for attorneys' fees, no attorneys' fees will be paid by the director.

(4) (a) Payments made from the fund may not exceed \$75,000 per construction project to qualified beneficiaries and laborers who have claim against the fund for that construction project.

(b) If claims against the fund for a construction project exceed \$75,000, the \$75,000 shall be awarded proportionately so that each qualified beneficiary and laborer awarded compensation from the fund for qualified services shall receive an identical percentage of the qualified beneficiary's or laborer's award.

(5) Subject to the limitations of Subsection (4), if on the day the order is issued there are inadequate funds to pay the entire claim and the director determines that the claimant has otherwise met the requirements of Subsection (1) or (2), the director shall order additional payments once the fund meets the balance limitations of Section 38-11-206.

Amended by Chapter 42, 2004 General Session

38-11-204. Claims against the fund -- Requirement to make a claim -- Qualifications to receive compensation -- Qualifications to receive a certificate of compliance.

- (1) To claim recovery from the fund a person shall:
 - (a) meet the requirements of Subsection (4) or (6);
 - (b) pay an application fee determined by the division under Section 63J-1-504;and
- (c) file with the division a completed application on a form provided by the division accompanied by supporting documents establishing:
 - (i) that the person meets the requirements of Subsection (4) or (6);
 - (ii) that the person was a qualified beneficiary or laborer during the construction on the owner-occupied residence; and
 - (iii) the basis for the claim.
- (2) To recover from the fund, the application required by Subsection (1) shall be filed no later than one year:
 - (a) from the date the judgment required by Subsection (4)(d) is entered;
 - (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the nonpaying party filed bankruptcy within one year after the entry of judgment; or
 - (c) from the date the laborer, trying to recover from the fund, completed the laborer's qualified services.
- (3) The issuance of a certificate of compliance is governed by Section 38-11-110.

(4) To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:

(a) (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act:

(A) for the performance of qualified services;

(B) to obtain the performance of qualified services by others; or

(C) for the supervision of the performance by others of qualified services in construction on that residence;

(ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence; or

(iii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a factory built housing retailer for the purchase of an owner-occupied residence;

(b) the owner has paid in full the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or factory built housing retailer under Subsection (4)(a) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract;

(c) (i) the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to payment under an agreement with that original contractor or real estate developer licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for services performed or materials supplied by the qualified beneficiary;

(ii) a subcontractor who contracts with the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier; or

(iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier;

(d) (i) unless precluded from doing so by the nonpaying party's bankruptcy filing within the applicable time, the qualified beneficiary filed an action against the nonpaying party to recover money owed to the qualified beneficiary within the earlier of:

(A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1a-502; or

(B) 270 days from the completion of the original contract pursuant to Subsection 38-1a-502(1);

(ii) the qualified beneficiary has obtained a judgment against the nonpaying party who failed to pay the qualified beneficiary under an agreement to provide qualified services for construction of that owner-occupied residence;

(iii) (A) the qualified beneficiary has:

(I) obtained from a court of competent jurisdiction the issuance of an order requiring the judgment debtor, or if a corporation any officer of the corporation, to appear before the court at a specified time and place to answer concerning the debtor's or corporation's property;

(II) received return of service of the order from a person qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b); and

(III) made reasonable efforts to obtain asset information from the supplemental proceedings; and

(B) if assets subject to execution are discovered as a result of the order required under Subsection (4)(d)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution from a court of competent jurisdiction; or

(iv) the qualified beneficiary timely filed a proof of claim where permitted in the bankruptcy action, if the nonpaying party has filed bankruptcy;

(e) the qualified beneficiary is not entitled to reimbursement from any other person; and

(f) the qualified beneficiary provided qualified services to a contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

(5) The requirements of Subsections (4)(d)(ii) and (iii) need not be met if the qualified beneficiary is prevented from compliance because the nonpaying party files bankruptcy.

(6) To recover from the fund a laborer shall:

(a) establish that the laborer has not been paid wages due for the work performed at the site of a construction on an owner-occupied residence; and

(b) provide any supporting documents or information required by rule by the division.

(7) A fee determined by the division under Section 63J-1-504 shall be deducted from any recovery from the fund received by a laborer.

(8) The requirements of Subsections (4)(a) and (b) may be satisfied if an owner or agent of the owner establishes to the satisfaction of the director that the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor who:

(a) was a business entity that was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but was solely or partly owned by an individual who was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

(b) was a natural person who was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

(9) The director shall have equitable power to determine if the requirements of Subsections (4)(a) and (b) have been met, but any decision by the director under this chapter shall not alter or have any effect on any other decision by the division under Title 58, Occupations and Professions.

Amended by Chapter 278, 2012 General Session

38-11-205. Subrogation.

(1) (a) (i) The state, on behalf of the fund, has the right of subrogation only to the extent of payments made from the fund.

(ii) Upon payment from the fund to a claimant, any payment to the claimant that was the basis of the claimant's claim against the fund shall be assigned to the fund for the enforcement of subrogation rights by the attorney general.

(iii) A claimant's judgment or bankruptcy claim against the nonpaying party shall be automatically assigned to the state, to the extent paid by the fund on a particular residence, upon the state's filing of the director's order of payment of claim with the appropriate court.

(b) The state's right of subrogation under Subsection (1)(a) has priority over any rights of the qualified beneficiary under the judgment or any civil penalties imposed.

(c) The state shall be awarded attorney's fees and court costs incurred in recovering claims paid from the fund.

(2) (a) The attorney general shall enforce all subrogation claims and may contract with private attorneys as necessary to adequately enforce subrogation claims.

(b) (i) In addition to the subrogation claims the attorney general may seek a civil fine of \$5,000 per residence for failure to reimburse the Residence Lien Recovery Fund within 90 days after any disbursement from the fund resulting from the registrant's failure to pay qualified beneficiaries under this chapter.

(ii) All claims under the judgment have priority over the civil penalty.

(3) The attorney general may charge the fund for costs incurred by the attorney general under this chapter.

Amended by Chapter 193, 1999 General Session

38-11-206. Limitations on fund balance -- Payment of special assessments.

(1) (a) If on June 30 of any year the balance in the fund is less than \$1,500,000, the division shall make a special assessment against all qualified beneficiaries in an amount that will restore the unencumbered fund balance to not less than \$2,000,000 or more than \$2,500,000.

(b) The amount of the special assessment shall be determined by the division under Section 63J-1-504 after consultation with the board.

(2) Special assessments made under this section shall be due and payable on December 1 following assessment.

(3) The fund balance limitations set forth in Subsection (1)(a) shall be used by the division only for the purpose of determining the amount of any special assessment and do not prohibit the fund balance from exceeding \$2,500,000 or falling below \$2,000,000.

Amended by Chapter 367, 2011 General Session

38-11-207. Reimbursement to the fund.

(1) If the director disburses money from the fund as a result of a person licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, or a qualified

beneficiary failing to pay qualified beneficiaries:

(a) the division shall issue a notice of the disbursement from the fund and the obligation to reimburse the fund to the licensee or qualified beneficiary; and

(b) the licensee or qualified beneficiary shall reimburse the fund within 20 days from the issuance of the notice required by Subsection (1)(a).

(2) The notice required by Subsection (1)(a) shall meet the requirements established by rule by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) (a) A finding of fact in an administrative action that a payment of any amount has been made from the fund in settlement of a claim arising from the act, representation, transaction, or conduct of a person licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, in violation of Section 58-55-603 shall result in the immediate suspension of that person's license without further compliance with Title 63G, Chapter 4, Administrative Procedures Act.

(b) The finding of fact for Subsection (3)(a) may be made in the same administrative action as the related claim and may be included in the findings required by Section 38-11-203.

(c) The suspension required by Subsection (3)(a) shall remain in effect until the person applies for reinstatement and is issued a license in accordance with Sections 58-1-308 and 58-55-303.

Amended by Chapter 382, 2008 General Session

38-11-301. Registration as a qualified beneficiary -- Initial regular assessment -- Affidavit.

(1) A person licensed as of July 1, 1995, as a contractor under the provisions of Title 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that regularly engage in providing qualified services shall be automatically registered as a qualified beneficiary upon payment of the initial assessment.

(2) A person applying for licensure as a contractor after July 1, 1995, in license classifications that regularly engage in providing qualified services shall be automatically registered as a qualified beneficiary upon issuance of a license and payment of the initial assessment.

(3) (a) After July 1, 1995, any person providing qualified services as other than a contractor as provided in Subsection (1) or any person exempt from licensure under the provisions of Title 58, Chapter 55, Utah Construction Trades Licensing Act, may register as a qualified beneficiary by:

(i) submitting an application in a form prescribed by the division;

(ii) demonstrating registration with the Division of Corporations and Commercial Code as required by state law;

(iii) paying a registration fee determined by the division under Section 63J-1-504; and

(iv) paying the initial assessment established under Subsection (4), and any special assessment determined by the division under Subsection 38-11-206(1).

(b) A person who does not register under Subsection (1), (2), or (3)(a) shall be prohibited from recovering under the fund as a qualified beneficiary for work performed

as qualified services while not registered with the fund.

(4) (a) An applicant shall pay an initial assessment determined by the division under Section 63J-1-504.

(b) The initial assessment to qualified registrants under Subsection (1) shall be made not later than July 15, 1995, and shall be paid no later than November 1, 1995.

(c) The initial assessment to qualified registrants under Subsections (2) and (3) shall be paid at the time of application for license or registration, however, beginning on May 1, 1996, only one initial assessment or special assessments thereafter shall be required for persons having multiple licenses under this section.

(5) A person shall be considered to have been registered as a qualified beneficiary on January 1, 1995, for purposes of meeting the requirements of Subsection 38-11-204(1)(c)(ii) if the person:

(a) (i) is licensed on or before July 1, 1995, as a contractor under the provisions of Title 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that regularly engage in providing qualified services; or

(ii) provides qualified services after July 1, 1995, as other than a contractor as provided in Subsection (5)(a)(i) or is exempt from licensure under the provisions of Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

(b) registers as a qualified beneficiary under Subsection (1) or (3) on or before November 1, 1995.

Amended by Chapter 183, 2009 General Session

38-11-302. Effective date and term of registration -- Penalty for failure to pay assessments -- Reinstatement.

(1) (a) A registration as a qualified beneficiary under this chapter is effective on the date the division receives the initial assessment of the qualified beneficiary.

(b) A registrant shall be required to renew the registrant's registration upon imposition of a special assessment under Subsection 38-11-206(1).

(2) A registration automatically expires if a registrant fails to renew the registrant's registration as required under Subsection (1).

(3) The division shall notify a qualified beneficiary in accordance with procedures established by rule when renewal of registration is required in connection with a special assessment.

(4) The license renewal notice to a contractor shall notify the licensee that failure to renew the license will result in automatic expiration of the licensee's registration as a qualified beneficiary and of the limitations set forth in Subsection (6) on qualified beneficiaries whose registration has expired to make a claim upon the fund.

(5) Registration may be reinstated by:

(a) submitting an application for reinstatement in a form prescribed by the division;

(b) paying a reinstatement fee determined by the division under Section 63J-1-504; and

(c) paying all unpaid assessments that were assessed during the period of the person's registration and all assessments made upon qualified beneficiaries during the period the applicant's registration was expired.

(6) (a) A qualified beneficiary whose registration expires loses all rights to make a claim upon the fund or receive compensation from the fund resulting from providing qualified service during the period of expiration.

(b) Except as provided by Section 58-55-401, a qualified beneficiary whose registration expires may make a claim upon the fund or receive compensation from the fund for qualified services provided during the period the qualified beneficiary was part of the fund.

Amended by Chapter 183, 2009 General Session

38-12-101. Definitions.

For purposes of this chapter:

(1) "Lien" means:

(a) failure to pay money owed for property, services, or a notice of interest, a judgment, or any other encumbrance on the title, that becomes a charge against or interest in:

(i) real property, a building, a structure, or an improvement including any franchise, privilege, appurtenance, machinery, or fixture pertaining to or used in connection with any real property, building, structure, or improvement;

(ii) personal property; or

(iii) a judgment, settlement, or compromise; or

(b) a tax as provided in Section 59-1-1413, 59-5-108, 59-5-208, 59-11-110, or 59-12-112.

(2) "Lien" does not mean a charge against or interest in, for failure to pay money owed for property, services, or a judgment, any:

(a) bank account;

(b) pension; or

(c) garnishment.

Amended by Chapter 212, 2009 General Session

38-12-102. Notice requirements for lien filings -- Exceptions.

(1) A lien claimant or the lien claimant's agent shall send by certified mail a written copy of a notice of lien to the last-known address of the person against whom the notice of lien is filed no later than 30 days after the day on which the notice of lien is submitted for recording with:

(a) a county recorder;

(b) a county clerk;

(c) a clerk of the court; or

(d) in the case of a lien on an aircraft under Section 38-13-201, the Federal Aviation Administration.

(2) (a) A notice of lien submitted for recording shall contain the following information:

(i) the name and address of the person against whom the lien is filed;

(ii) a statement that the property owned by the person against whom the lien is filed is subject to a lien;

(iii) (A) the amount of the judgment, settlement, or compromise, if the lien is based on a charge against or interest in a judgment, settlement, or compromise;

(B) the amount of state taxes owed, if the lien is based on unpaid state taxes;

(C) the total amount of the unpaid assessment that is subject to the lien, including any fees, charges, or costs, if the lien is based on an unpaid assessment under Title 57, Chapter 8, Condominium Ownership Act, or Title 57, Chapter 8a, Community Association Act; or

(D) the amount of the unpaid fine, if the lien is based on an unpaid fine under Title 57, Chapter 8, Condominium Ownership Act, or Title 57, Chapter 8a, Community Association Act; and

(iv) (A) the name, address, and phone number of the lien claimant; or

(B) if the lien claimant has a representative for purposes of the lien, the name of the lien claimant and the name, address, and phone number of the lien claimant's representative.

(b) When a lien claimant mails a copy of a notice of lien to the person against whom the notice of lien is filed, in accordance with Subsection (1), the notice of lien shall contain:

(i) the requirements described in Subsection (2)(a);

(ii) the date the notice of lien was submitted for recording; and

(iii) the article number on the certified mail receipt.

(3) The notice requirements of Subsections (1) and (2) do not apply to:

(a) a preconstruction or construction lien as provided in Title 38, Chapter 1a, Preconstruction and Construction Liens;

(b) a lessors' lien as provided in Title 38, Chapter 3, Lessors' Liens;

(c) a federal tax lien as provided in Title 38, Chapter 6, Federal Tax Liens;

(d) a hospital lien as provided in Title 38, Chapter 7, Hospital Lien Law;

(e) a self-service storage facilities lien as provided in Title 38, Chapter 8, Self-Service Storage Facilities;

(f) an oil, gas, or mining lien as provided in Title 38, Chapter 10, Oil, Gas, and Mining Liens;

(g) a claim against the Residence Lien Recovery Fund as provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;

(h) a trust deed;

(i) a mortgage;

(j) any interests subject to a security agreement as defined in Section 70A-9a-102;

(k) any other liens subject to the same or stricter notice requirements than those imposed by Subsections (1) and (2); or

(l) a court judgment or abstract of a court judgment presented for recording in the office of a county recorder.

Amended by Chapter 129, 2014 General Session

38-12-103. Failure to notify -- Effect -- Penalty.

(1) (a) A person who fails to meet the notice requirements of Subsections 38-12-102(1) and (2) is precluded from receiving an award of costs and attorneys' fees

from the person against whom a notice of lien has been filed in an action to enforce the lien if costs and attorneys' fees are authorized by contract or statute.

(b) Subsection (1)(a) does not create a right to costs and attorneys' fees.

(2) In addition to the penalties provided in Subsection (1)(a), a lien claimant who, within 20 days from the date of receiving notice of noncompliance with the notice requirements of Subsection 38-12-102(1) or (2), willfully refuses to release the notice of lien or record the lien in compliance with Section 38-12-102 is liable to the person against whom the notice of lien was filed for \$1,000 or for treble damages, whichever is greater.

(3) Failure to meet the notice requirements of Subsections 38-12-102(1) and (2) does not:

(a) invalidate any lien arising at common law or in equity or by any statute of this state; or

(b) affect the rules of priority provided in Title 70A, Chapter 9a, Uniform Commercial Code -- Secured Transactions.

Amended by Chapter 252, 2000 General Session

38-12-104. Independent grounds for imposing a lien not created.

The provisions of this chapter do not create independent grounds for imposing a lien.

Enacted by Chapter 323, 1995 General Session

38-13-101. Title.

This chapter is known as the "Aircraft Lien Act."

Enacted by Chapter 187, 2005 General Session

38-13-102. Definitions.

As used in this chapter:

(1) "Aircraft" is as defined in Section 72-10-102.

(2) "Repairman" means a person who makes, alters, repairs, or performs labor on an aircraft.

Enacted by Chapter 187, 2005 General Session

38-13-103. Scope of chapter.

(1) This chapter may not be interpreted to impair or affect the right of any person to whom a debt may be due for any work performed or materials furnished to maintain a personal action to recover the same.

(2) This chapter supersedes Sections 38-2-3 and 38-2-4 as it relates to a lien for a repairman making, altering, repairing, or performing labor on an aircraft.

Enacted by Chapter 187, 2005 General Session

38-13-201. Lien on aircraft -- Filing required -- Notice -- Release.

(1) A repairman who makes, alters, repairs, or performs labor on an aircraft at the request of the owner or other person entitled to possession of the aircraft shall have a lien upon the aircraft for the reasonable value of the following furnished and used in making the aircraft or in altering or repairing the aircraft:

- (a) the labor performed; and
- (b) materials.

(2) A repairman may retain possession of the aircraft until the amount due under Subsection (1) is paid, subject to the rights and interests of any secured party in the aircraft that has priority in accordance with Section 38-13-205 over the lien imposed under this chapter unless the secured party requested that the repairman make, alter, repair, or perform labor on the aircraft.

(3) (a) For a lien to be valid, a repairman shall file the lien with the Federal Aviation Administration within 90 days of the last day on which the repairman makes, alters, repairs, or performs labor on the aircraft.

(b) In addition to any requirements of 14 C.F.R. Part 49, Recording of Aircraft Titles and Security Documents, the lien filing required by Subsection (3)(a) shall:

- (i) comply with Subsection 38-12-102(2); and
- (ii) include:

(A) the United States Registration Number, make, model, and serial number of the aircraft subject to the lien;

(B) the name of the manufacturer, the model, and the serial number of any engine, propeller, or appliance subject to the lien, to the extent that it is not otherwise identifiable by reference to the United States Registration Number;

(C) the amount of the lien; and

(D) a narrative statement describing the nature of the labor performed.

(c) Notwithstanding the day on which the repairman files a lien with the Federal Aviation Administration, a lien filed with the Federal Aviation Administration is effective beginning the last day on which the repairman makes, alters, repairs, or performs labor on the aircraft.

(4) A repairman shall send a notice of lien to the person against whom the notice of lien is filed in accordance with Section 38-12-102.

(5) If the repairman is paid amounts owed under this section, the repairman shall file a release of lien with the Federal Aviation Administration.

Enacted by Chapter 187, 2005 General Session

38-13-202. Foreclosure on a lien.

(1) A repairman shall file a foreclosure action in a court of competent jurisdiction to enforce the lien filed under this chapter within 180 days from the day on which the repairman sends notice of the lien in accordance with Section 38-12-102.

(2) In a foreclosure action filed under this section, the repairman or the repairman's attorney shall show by complaint to the court:

(a) that the repairman made, altered, repaired, or performed labor on the aircraft that entitles the repairman to a lien under this chapter;

(b) that the owner or other person entitled to possession of the aircraft

requested that the repairman make, alter, repair, or perform labor described in Subsection (2)(a);

(c) that the repairman sent notice of the lien in accordance with Sections 38-12-102 and 38-13-201;

(d) that the person against whom the lien is filed failed to pay the amount owed within 30 days of the day on which the repairman sent the notice of lien described in Subsection (2)(c); and

(e) an itemized description of the amounts owed.

(3) In a foreclosure action, the amount claimed by the repairman may include:

(a) work performed;

(b) materials;

(c) interest;

(d) storage fees charged; and

(e) any costs incurred by the repairman for using enforcement procedures under this chapter, including attorneys' fees.

Enacted by Chapter 187, 2005 General Session

38-13-203. Repossession of aircraft.

(1) If a repairman is not in possession of the aircraft under Section 38-13-201, a repairman may take possession of an aircraft to recover the amounts owed under a lien imposed by this chapter if:

(a) the repairman obtains a foreclosure judgment under Section 38-13-202;

(b) the repairman provides written notice of the intent to take possession of the aircraft:

(i) to:

(A) the owner of the aircraft; and

(B) any person described in Subsection 38-13-204(1)(b); and

(ii) at least 15 days before the day on which the repairman takes possession of the aircraft;

(c) the aircraft is in the possession of one of the following if that person requested that the repairman make, alter, repair, or perform labor on the aircraft:

(i) the owner of the aircraft; or

(ii) other person entitled to possession of the aircraft; and

(d) the person described in Subsection (1)(c) has not paid the amount owed under this chapter before the day on which the repairman takes possession of the aircraft.

(2) Subject to the other requirements of this section, a repairman may take possession of an aircraft under this section:

(a) pursuant to judicial process; or

(b) without judicial process, if the transfer of possession of the aircraft proceeds without breach of the peace.

Enacted by Chapter 187, 2005 General Session

38-13-204. Selling the aircraft.

(1) A repairman may sell an aircraft subject to a lien under this chapter if:

- (a) the repairman receives a judgment in the foreclosure action filed under Section 38-13-202;
- (b) the repairman gives notice to:
 - (i) the owner of the aircraft;
 - (ii) the customer as indicated on the work order for the making, altering, repairing, or performing of labor; and
 - (iii) all other persons claiming an interest in or lien on the aircraft:
 - (A) as disclosed by the records of the Federal Aviation Administration or of corresponding agencies of any state in which the aircraft appears registered; and
 - (B) that is known by the repairman;
- (c) the notice required by Subsection (1)(b) is sent by certified mail at least 30 days before the proposed or scheduled date of any sale; and
- (d) the notice required by Subsection (1)(b) contains:
 - (i) a description of the aircraft and its location;
 - (ii) the name and address of each person described in Subsection (1)(b);
 - (iii) the name, address, and telephone number of the repairman;
 - (iv) notice:
 - (A) that the repairman has a foreclosure judgment against the aircraft for the amount stated in the judgment;
 - (B) of the cash sum which, if paid to the repairman would be sufficient to redeem the aircraft from the lien claimed by the repairman;
 - (C) that the lien claimed by the repairman is subject to enforcement under this chapter; and
 - (D) that the aircraft may be sold to satisfy the lien;
 - (v) the date, time, and location of any proposed or scheduled sale of the aircraft;
 - (vi) notice as to whether the sale is private or public; and
 - (vii) notice that the owner of the aircraft or other person entitled to possession of the aircraft has a right to recover possession of the aircraft without instituting judicial proceedings by posting a bond in accordance with Section 38-13-206.

(2) (a) The repairman shall at least 20 days before the proposed or scheduled date of sale of the aircraft publish the notice required by this section if:

- (i) the owner of the aircraft is unknown;
- (ii) the whereabouts of the owner of the aircraft cannot be determined; or
- (iii) the owner of the aircraft or any person notified under Subsection (1)(b) fails to acknowledge receipt of the notice.

(b) The notice described in Subsection (2)(a) shall be:

- (i) published once at least 20 days before the proposed or scheduled date of sale of the aircraft in a newspaper circulated in the county where the aircraft is held; and
- (ii) published, in accordance with Section 45-1-101, at least 20 days before the proposed or scheduled date of sale of the aircraft.

(3) (a) An aircraft subject to lien enforcement under this chapter may be sold by the repairman at public or private sale.

(b) Notwithstanding Subsection (3)(a), in the case of a private sale, every aspect of the sale, including the method, manner, time, place, and terms shall be commercially

reasonable.

(4) This section may not be construed to affect an owner's right to redeem the owner's aircraft from the lien at any time prior to sale by paying the amount claimed by the repairman for:

- (a) work performed;
- (b) materials;
- (c) interest;
- (d) storage fees charged; and
- (e) any costs incurred by the repairman for using enforcement procedures under this chapter, including attorney fees.

(5) The proceeds of a sale under this section shall be distributed as follows:

(a) amounts owed persons having a security interest or lien on the aircraft shall be paid in the order that they have priority in accordance with Section 38-13-205; and

(b) the amount remaining after the amount described in Subsection (5)(a) is paid shall be paid to the owner of the aircraft before the sale of the aircraft under this section.

(6) An aircraft against which a lien is filed may not be sold earlier than the later of:

(a) 45 days after the last day on which the repairman makes, alters, repairs, or performs labor on the aircraft; or

(b) 30 days from the date on which the repairman sends notice of the lien in accordance with Section 38-12-102.

Amended by Chapter 388, 2009 General Session

38-13-205. Priority of liens.

(1) Except as provided in Subsection (2), a lien imposed under this chapter has priority over any lien, mortgage, security interest, or other encumbrance arising after the day on which the lien is effective in accordance with Section 38-13-201.

(2) The lien imposed under this chapter does not have priority over a lien imposed pursuant to Title 59, Chapter 2, Property Tax Act.

Enacted by Chapter 187, 2005 General Session

38-13-206. Release of aircraft by posting a bond.

(1) The owner or other person entitled to possession of the aircraft may have the aircraft released from any lien claimed on it under this chapter by filing with the clerk of a court of competent jurisdiction a cash or surety bond, payable to the person claiming the lien, and conditioned for the payment of any judgment that may be recovered on the lien, with costs, interest, and storage fees.

(2) (a) The repairman has 60 days after the day on which the repairman receives notice that the owner or other person entitled to possession of the aircraft has filed the bond provided in Subsection (1) to file suit to foreclose the repairman's lien.

(b) If the repairman fails to timely file an action, the clerk of the court shall release the bond.

(3) (a) If an owner or other person entitled to possession of the aircraft files a

bond as provided in Subsection (1), the clerk of the court shall provide that person with evidence that the bond has been filed.

(b) The owner or other person entitled to possession of the aircraft shall file the evidence of a bond provided under Subsection (3)(a) with the Federal Aviation Administration.

(c) Filing the evidence provided in Subsection (3)(a) with the Federal Aviation Administration releases the lien on the aircraft if the repairman fails to foreclose on the lien within 60 days of the day on which the repairman receives notice that the owner or other person entitled to possession of the aircraft filed the bond.

Enacted by Chapter 187, 2005 General Session